998.

SUPREME COURT OF THE UNITED STATES.

No. 72.

FRANCIS C. BLACK AND JAMES CHAPMAN, PLAINTIFFS IN ERROR,

vs.

J. W. ZACHARIE & CO.

IN ERROR TO THE CIRCUIT COURT U. S. FOR EAST LOUISIANA.

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J. & G. S. Gideon, printers.

UNITED STATES CIRCUIT COURT,
Ninth circuit, Eastern district of Louisiana:

Be it remembered that, on the seventh day of December, in the year of our Lord one thousand eight hundred and forty-one, Francis C. Black, by his attorney, William C. Micon, came into the United States circuit court, 9th circuit, eastern district of Louisiana, and filed the following record, to wit:

STATE OF LOUISIANA,
Commercial court of New Orleans:

ZACHARY & CO.
vs. } No. 4,013.
BLACK.

Affidavit for attachment and bond, filed 4th May, 1841:

JAMES W. ZACHARIE & CO.
vs. } Commercial court.
FRANCIS C. BLACK.

J. W. Zacharie deposes that Francis C. Black is indebted to his firm in the sum of eight thousand dollars, and that said Black resides out of the State.

(Signed) J. W. ZACHARIE.

Sworn to and subscribed this 4th May, 1841, before me.

(Signed) ED. GARDERE, *Clerk.*

Let an attachment issue according to law, on affiant's giving bond, with Thomas Hale as surety, in the sum of twelve thousand dollars, conditioned as the law directs.

(Signed) PL. DEVERGES, *D'y Clerk.*

NEW ORLEANS, *4th May,* 1841.

Know all men by these presents, that we, J. W. Zachary and Theodore Zachary, and trading under the firm of J. W. Zachary & Co., and Thomas Hale, of the city of New Orleans and State of Louisiana, are held and firmly bound unto Francis C. Black in the sum of twelve thousand dollars, lawful money of the United States of America, to be paid to the said Francis C. Black, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the fourth day of May, in the year of our Lord, 1841.

Whereas, J. W. Zacharie & Co. have this day presented a petition to the honorable the commercial court of New Orleans, praying for an attachment against the goods and al. of the said Francis C. Black: Now, the condition of the above obligation is, that we, the above bound J. W. Zachary & Co. and Thomas Hale, will well and truly pay to the said Francis C. Black, the defendant in said attachment, all such damages as he may recover against us, in case it should be decided that the attachment was wrongfully obtained.

(Signed) J. W. ZACHARY & CO.,
THOMAS HALE.

THE STATE OF LOUISIANA,
Commercial court of New Orleans.

The State of Louisiana to the sheriff of the commercial court of New Orleans, greeting:

Whereas, due proof has been made before the commercial court of New Orleans, by James W. Zacharie, that Francis C. Black is indebted to his firm of James W. Zacharie & Co., in the sum of eight thousand dollars, and that the said Black resides permanently out of the State of Louisiana. Now, therefore, you are commanded, in the name of the State of Louisiana, and of the commercial court of New Orleans, to seize and attach according to law, and take into your possession, the goods and *chattles*, lands and tenements, rights and moneys, effects and credits, of the said Francis C. Black, if any you find, in the parish of Orleans, to the amount of what will suffice to discharge the said debt and costs of suit; and that you give notice of this proceeding by leaving a copy thereof in the French and English languages, at the last place of abode of the said defendant, if in said parish, and causing a true copy thereof to be affixed at the door of the parish church of said parish, and make return of this writ, and endorse thereon the manner in which you have executed it, before our court, on or before the 1st Monday of June, in the year of our Lord, 1841.

(Signed) ED. GARDERE, *Clerk.*

CLERK'S OFFICE, *this 4th day of May*, 1841.

4,013.

JAMES W. ZACHARIE & Co.
vs.
FRANCIS C. BLACK.
} Commercial court of New Orleans.

Received, Tuesday, May 4th, 1841, at 2 o'clock, P. M., and attached in the hands of the Carrollton Bank, of the Gaslight and Banking Company, goods, chattels, moneys, effects, rights, credits, lands, tenements, and property of any kind whatever, belonging to the defendant, and he, as herein stated, residing permanently out of the State, I posted copy of citation and attachment to the door of the church of St. Louis of Orleans, and also to that of the room in which this honorable court is held, and executed this writ in all things as the law directs. No other property found.

(Signed) G. A. DUCROS,
Rec'd, 17th June, 1841. *Sheriff Com. Court.*

J. W. ZACHARY & Co.
vs. } Commercial court.
FRANCIS C. BLACK.

Petition filed, 5th May, 1841.

To the honorable Charles Watts, judge of the commercial court of the city of New Orleans:

The petition of J. W. Zachary and Theodore Zachary, residing in New Orleans, and there trading under the firm of J. W. Zachary & Co., respectfully represents:

That Francis C. Black, residing in Charleston, S. C., is indebted to his said firm in the sum of eight thousand dollars for this, viz: that, for a long time past, there has existed a correspondence between them and the said F. C. Black, and various commercial transactions have arisen and continued between them. Your petitioners having shipped to him a cargo of sugar and molasses, obtained loans for him on bank stock, and by drawing or accepting bills of exchange for his accommodation, paid interest and costs of court, all which are more fully detailed in the annexed account, (the vouchers for which will in due time be produced;) from all which transactions there results to your petitioner a balance to the above amount, which the said F. C. Black refuses and neglects to pay, though required. Wherefore, he prays said Black may be cited to appear and answer, and be condemned to pay him said sum with interest and costs, and all other relief, particularly a writ of attachment, and counsel named to represent the absent defendant.

(Signed) GEO. STRAWBRIDGE,
for Defendant.

Francis C. Black, in account current, and interest account April 30th, 1841, a 6 per cent. per annum, with J. W. Zachary & Co.

1841.		Dr.		
Jan'y	23	To balance as per account rendered - -	–	$1,049 97
	28	accept'ce yr. dft. favor Jas. Chapman, due - 29 Ap. '41 - - - - -	–	720
	"	do A. G. Rose, due 29–1 Ap. '41 -	29 14 92	2,368 25
Feb'y	16	cash per curtail and dis't. stock Carrolton B. R.	73 3 02	247 95
March	23	do do do	38 1 57	246 60
April	19	amt. n. proceeds sales sugar and molasses per Catherine, corrected, due 27–30 April, '41	–	9,336 68
	10	cash p. sheriff's fees in suit vs. J. C. Kerr -	20 02	6
	24	do court do Lafonsa -	6 01	14 25
	27	do curtail on stock Carrollton B. R. -	3 12	245 21
	30	amt. of red figures per contra - -	20 58	
	"	balance of interest - - - - -	–	9 94
			40 24	$14,244 85
April	30	To balance due us - - - - -	–	$56 63
	"	amt. of our drafts, due 27–30 April, '41 -	–	3,000

ACCOUNT—Continued.

April	30	To amount of our drafts, due 4-7 May, '41 -	-	$2,000
	"	do 30-3 June, '41 -	-	2,000
	"	do 10-14 June, '41 -	-	1,088 25
				8,144 88
		Less int. in red - -	-	20 58
		Due in cash 30 April, '41 -	-	8,124 30
		Cr.		
1841.				
Jan'ry	18	By amt. of our dft. fav. Zacary & Co. by *at* 70 ds. due 29-1 Ap., pa'ble in N. York, say due 25 March, '41 - - -	-	$5,000
		1 per cent. prem. on do. as per advance, 25 March, '41 - - - -	36 30 30	50
	23	amt. of our dft. fav. St. Galer of As. -	-	1,649 97
Feb'y	18	do A. McDonald for $1,500, due 27-30 April, '41 - - - -	-	3,000
	27	our dft. at 60 ds. favor A. McDonald, due 4-7 Mar. - - - - -	-	3,000
March	24	do 60 do 30-2 June, '41	-	2,000
April	1	do 60 do 6-9 " "	-	1,088 25
	30	interest to balance - - - -	9 94	9 94
	"	balance - - - - -	-	56 63
			40 24	$14,244 85

E. & O. E.
New Orleans, 30*th April,* 1841.

Citation.

State of Louisiana, *commercial court of New Orleans.*

Zachary & Co.
vs. } 4,013.
Black.

Mr. Francis C. Black, residing out of the State.

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable Charles Watts, judge of the said court, the 5th day of May, 1841.

(Signed) ED. GARDERE, *Clerk.*

Rec'd, 5th May, 1841, and posted copy of citation to the door of the church of St. Louis, and also to that of the room in which this honorable court is held, and served copy of petition and citation on H. Lockett in person. Returned, May, 1841.

(Signed) L. A. DUCROS,
Sheriff Commercial C.

WEDNESDAY, 5*th May*, 1841.

Present, the honorable C. Watts.

ZACHARY & Co.
vs. } 4,013.
BLACK.

On motion of G. Strawbridge, of counsel for plaintiffs, ordered that H. Lockett be appointed to represent the absent defendant in this case.

Extracts from the minutes.

Defendant's answer, filed 12th June, 1841.

To the honorable the commercial court of New Orleans.

The answer of Francis C. Black, by his attorney, appointed by this court to represent him in this suit commenced by attachment by Zacharie & Co., respectfully shows: That said defendant resides in Charleston, South Carolina, that he has not been personally served with citation in this case, and that no property belonging to him has been attached. Defendant further specially avers, that the bank stocks and credits attached in this suit had been by said defendant legally and effectually transferred, assigned, and delivered by defendant to James Chapman, of South Carolina; and that all right, title, and interest of defendant had ceased, and was extinguished before attachment in this cause was levied; that said transfer, made by the due and formal execution of a deed commonly called a trust deed, which was valid and legal at Charleston, South Carolina, the place of defendant's domicil, and by which passed all the personal property and credits embraced therein; and that all due and legal notice had been given of said assignment to all parties concerned—wherefore, defendant pleads that this court is without jurisdiction to entertain this suit, and prays that the same be dismissed. But if this plea be overruled, then defendant denies all and singular the allegations of plaintiff's petition, and prays that his demand be dismissed.

(Signed) H. LOCKETT, per
W. C. MICON,
Deft's. Atty.

Petition to remove cause to U. S. C. Ct., filed 19*th Nov.*, 1841.

To the honorable the commercial court of New Orleans.

The petition of Francis C. Black, a citizen of the State of South Carolina, respectfully shows: That a suit has been commenced against him in this court, by process of attachment, in which J. W. Zacharie & Co., citizens of the State of Louisiana, are plaintiffs, and in which the amount in dispute exceeds the sum of five hundred dollars, exclusive of costs.

Now, your petitioner here tenders to this court a bond with security, that he will, on or before the first day of the next session of the United States circuit court in and for the eastern district of Louisiana, file in said circuit court copies of the said process against him; and also, there and then appear and plead, answer, or demur to the same, and comply with all other requisites of the law in such cases made and provided.

Wherefore, petitioner prays that said bond be accepted, and that this honorable court proceed no further in said cause.

(Signed) LOCKETT & MICON,
Atty's. for pet.

Personally appeared Wm. C. Micon, who being duly sworn, deposes, that to the best of his knowledge and belief Francis C. Black is a citizen of the State of South Carolina, and that J. W. Zacharie & Co. are citizens of Louisiana, and that the amount in dispute in suit of Zacharie & Co. vs. Black exceeds five hundred dollars, exclusive of costs.

(Signed) WM. C. MICON.

Sworn to and subscribed before me in open court this 19th November, 1841.

(Signed) JOHN E. HOLLAND,
Dy. Clerk.

STATE OF LOUISIANA,
City of New Orleans:

Know all men by these presents, that we, Francis C. Black and Jas. H. Leverich & Co. are held and firmly bound in solido to J. W. Zacharie & Co., of New Orleans, his heirs and assigns, in the full sum of one thousand dollars, to the payment of which, well and truly to be made, we bind ourselves and our representatives, jointly and severally by these presents.

The condition of the above obligation is such, that if the said Francis C. Black, defendant in the suit of J. W. Zacharie & Co. vs. Black, in the commercial court of New Orleans, shall, on or before the first day of the next session of the 9th circuit court of the United States in and for the eastern district of Louisiana, file in said circuit court copies of the said process against him; and also, then and there appear, and plead, answer, or demur to the same, and shall comply with all other requisites of the law in such cases made and provided, then the above obligation shall be void, otherwise to remain in full force and effect.

Witness our hands and seals this November, 1841.

(Signed) FRANCIS C. BLACK,
Per Lockett & Micon, atty's.
JAS. H. LEVERICH & CO.

Affidavit filed 19*th November*, 1841.

Personally appeared Wm. C. Micon, who being sworn deposes, that soon after the appointment of his partner, Mr. Lockett, as attorney of F. C. Black, in the suit of Zacharie & Co., deponent wrote to said Black, informing him of the suit and appointment, but received no answer from him until about the month [of] August last, after the adjournment of the court, when the said Black wrote to Lockett & Micon, and after some correspondence the said Black, in the month of October just passed, (by his attorney in Charleston,) directed the suit to be removed to the U. S. court. Deponent further states that the answer filed by him for Mr. Lockett, was filed solely under the appointment of the court, and without instructions from the defendant, and that the facts stated in said answer came to the knowledge of deponent and of Mr. Lockett by correspondence with Mr. J. Chapman, assignee of F. C. Black, in Charleston.

(Signed) WM. C. MICON.

Sworn to and subscribed before me in open court this 19th November, 1841.

(Signed) JOHN E. HOLLAND,
Dy. Clerk.

FRIDAY, 19*th November*, 1841.

Present the honorable C. Watts.

ZACHARIE & Co.
vs. } No. 4,013.
BLACK.

On motion of W. C. Micon, of counsel for defendant, and on filing a petition, with bond and security according to law, praying the removal of this cause to the U. S. circuit court, and having complied with the requisites of the law, it is therefore ordered, that the surety be accepted, and said cause be removed to the 9th circuit court of the U. S. for the eastern district of Louisiana, and that this court proceed no further in said cause.—*Extract from the minutes.*

I, Edward Gardere, clerk of the commercial court of New Orleans, do hereby certify [that] the above and foregoing 13 pages do contain a full and faithful and complete transcript of the record of the case wherein J. W. Zacharie & Co. are plaintiffs, and Francis C. Black is defendant, instituted in this court, and now on the record thereof, under the No. 4,013.

Witness my hand and the seal of said court, at New Orleans, this 24th Nov., 1841.

(Signed) ED. GARDERE, *Clerk.*

I, Charles Watts, sole judge of the commercial court of New Orleans, do hereby certify that Ed. Gardere is clerk of the said court, and that the signature, "Ed. Gardere, clerk," to the foregoing certificate is in the proper handwriting of him, the said clerk; to his official acts as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on this 25th day of November, in the year of our Lord one thousand eight hundred and forty-one.

(Signed) C. WATTS, *Judge.*

And afterwards, to wit, on the 7th day of December, 1841, the following petition or prayer for oyer was filed in the clerk's office U. S. circuit court:

J. W. Zacharie & Co.
vs.
F. C. Black.

And now, in the circuit court of the United States for the eastern district of Louisiana, comes the defendant, F. C. Black, by his attorney, and says that he cannot safely *place* or answer to the petition filed in this cause, until the plaintiffs have exhibited and filed in court the several bills of exchange, or drafts mentioned in their said petition and account, and which constitute the ground of plaintiff's demand; wherefore defendant prays that said plaintiff be required to produce in court the said drafts, and that defendant have oyer of the same before he is required further to answer or plead in the premises.

(Signed) LOCKETT & MICON,
Att'ys for Deft.

And on the same day and year above mentioned, the following petition of intervention was filed:

To the honorable the ninth circuit court of the United States, for the eastern district of Louisiana.

The petition of James Chapman, who is the citizen of the State of South Carolina, residing in the city of Charleston, in said State, respectfully shows: That on the 28th day of April, 1841, one Francis C. Black, also a citizen of South Carolina, residing in Charleston, executed in due form, according to the laws of said State, a certain assignment or deed of trust, in favor of your petitioner, and thereby assigned, granted, and delivered to petitioner, for divers goods and sufficient causes and considerations therein expressed, five hundred shares of the capital stock of the New Orleans Gas Light and Banking Company, and six hundred shares of the New Orleans and Carrollton Railroad and Banking Company, both corporations established in New Orleans; that your petitioner gave immediate notice of said assignment to said corporations, and demanded the formal transfer of said stocks to be made to him on the books of said companies, but that J. W. Zacharie & Co., merchants of New Orleans—to wit, J. W. Zacharie and Theodore Zacharie, citizens of Louisiana—on or about the 4th day of May last, obtained from the commercial court of New Orleans a writ of attachment against the said Francis C. Black, and wrongfully and illegally caused said writ to be levied upon the said stocks in said corporations, which were then the property of petitioner and in his possession, and not liable to seizure for the debts of said F. C. Black.

Petitioner further shows, that said F. C. Black has caused the said suit and attachment to be removed into this court, where it is now pending, and that the said J. W. Zacharie & Co., plaintiffs, though fully informed of the facts above stated, both before and since the issue of this said writ of attachment; and though frequently requested to relieve them *since* wrongful attachment, yet neglect and refuse so to do, to the great injury of your petitioner.

Wherefore your petitioner prays to be permitted to intervene in said suit, that the said J. W. Zacharie & Co. be cited to appear and answer this petition in intervention, that the said attachment upon said bank stocks be dismissed and dissolved, and that your petitioner be decreed the lawful owner thereof, for the uses expressed in said deed of assignment, which will in due time be produced. And petitioner prays for general relief in the premises.

(Signed) LOCKETT & MICON,
Att'ys for Intervenor.
ISAAC PRESTON,
Att'y for Deft.

Afterwards, the following citation was issued on the seventh day of December, 1841:

The President of the United States of America, to the marshal of the eastern district of Louisiana or his lawful deputy, greeting:

J. W. Zacharie & Co.
vs. } No. 874.
F. C. Black.

Intervention of James Chapman.

You are hereby commanded to summon J. W. Zacharie & Co., and you, James W. Zacharie & Co., are hereby cited to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver his answer to the same, in the office of the clerk of the circuit court of the United States, ninth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every twenty miles the defendant's residence is distant from New Orleans, the place where the court is held.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this 7th day of December, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the said United States of America the sixty-sixth year.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Marshal's Return.

Received, 8th December, 1841, and same day served a copy of the within citation, and copy of petition and documents annexed, on J. W. Zacharie & Co., by handing the same to J. W. Zacharie in person, in the city of New Orleans.

(Signed) WM. K. STILES,
D'y U. S. Marshal.
For A. S. ROBERTSON,
U. S. Marshal.

And afterwards, to wit, on the 11th day of December, 1841, the following answer of George Strawbridge, esq., to the petition of intervention of James Chapman, was filed in clerk's office U. S. circuit court, 9th circuit, eastern district of Louisiana:

U. S. CIRCUIT COURT,
9th circuit, eastern dist. of La.

J. W. ZACHARIE & Co.
vs.
FRANCIS C. BLACK.

The answer of J. W. Zacharie & Co. to the petition of intervention of James Chapman, respectfully represents:

That they deny all the allegations in said petition, save that he did attach the stock in question, and that the said F. C. Black has removed said suit into this court.

And for further answer they say, that if there exists any such assignment as is in said petition alleged, it has been made by said Black when in a state of insolvency, and with a view to give an unjust preference to said Chapman over the rest of his creditors, and he prays trial by jury.

(Signed) GEORGE STRAWBRIDGE, *Att'y.*

And afterwards, to wit, on the 7th day of December, 1841, the five following notes and protest were filed:

No. 1—A.

NEW ORLEANS, *February* 17, 1841.

No. 486. *Exchange for* $1,500.

Sixty days after sight of this first of exchange, second and third of same tenor and date unpaid, pay to the order of Alex'r McDonald, esq., fifteen hundred dollars for value received, and place the same to account of

J. W. ZACHARIE & Co.

To F. C. BLACK, esq., *Charleston.*

(Endorsed) ALEX. McDONALD.

Protest.

The State of South Carolina, *city of Charleston.*

On this day, the thirtieth of April, anno domini one thousand eight hundred and forty-one, and in the sixty-fifth year of the independence of the United States of America, at the request of the president and directors of the Bank of the State of South Carolina, I, Richard W. Cogdell, justice of the quorum and notary public, by lawful authority, duly sworn, admitted, and commissioned by letters patent under the great seal of the said State, residing and practising in the city of Charleston, and State aforesaid, did exhibit the original draft, whereof a true copy is on the other side written, at the said bank, and demanded payment of the same, which was refused for want of *funs*. I demanded payment of the same of Francis C. Black, the acceptor, in person, who answered, "I cannot pay the draft." I sent by mail to New Orleans, notice of non-payment of the same for James W. Zacharie & Co., the drawers. I gave notice of non-payment of the same in person to the endorser, Alexander McDonald. Therefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly and publicly protest, against the drawer of the said draft, endorser and endorsers, and against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or sustained, or to be suffered or sustained, for want of payment of the said draft.

Thus done and protested at Charleston aforesaid, the day and year above written.

In testimonium veritatis.

(Signed) R. W. COGDELL,
Notary Public of the Bank of the State of South Carolina.

New Orleans, *February* 17, 1841.

No. 486. *Exchange* $1,500.

Sixty days after sight of this first of exchange, (second and third of same tenor and date unpaid,) pay to the order of Alexander McDonald, esq., fifteen hundred dollars for value received, and place the same to account of

(Signed) J. W. ZACHARIE & Co.

To F. C. Black, esq., *Charleston.*

(Endorsed) ALEX. McDONALD.

No. 2—"B."

New Orleans, 24*th March*, 1841.

No. 493. *Exchange for* 2,000 *dollars.*

Sixty days after sight of this first of exchange, second and third of same tenor and date unpaid, pay to the order of Alex. McDonald, esq., two thousand dollars for value received, and place the same to account of

(Signed) J. W. ZACHARIE & Co.

To F. C. Black, esq., *Charleston, S. C.*

(Endorsed) ALEX. McDONALD, (erased.)

The State of South Carolina, *city of Charleston.*

On this day, the third of June, anno domini one thousand eight hundred and forty-one, and in the sixty-fifth year of the independence of the United States of America, at the request of the President and directors of the Bank of the State of South Carolina, I, Richard W. Cogdell, justice of the quorum and notary public, by lawful authority, duly sworn, admitted, and commissioned by letters patent under the great seal of the said State, residing and practising in the city of Charleston, and State aforesaid, did exhibit the original draft, whereof a true copy is on the other side written, at the said bank, and demanded payment of the same, which was refused for want of funds. I demanded payment of F. C. Black and he refused the same. I sent by mail to New Orleans a notice of non-payment of the draft for James W. Zacharie & Co. I gave notice to Alexander McDonald, endorser, in person, of the non-payment of the same. Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly and publicly protest, against the drawer of the said draft, endorser and endorsers, and against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or sustained, or to be suffered or sustained, for want of payment of the said draft.

Thus done and protested at Charleston aforesaid, the day and year above written.

In testimonium veritatis.

(Signed) R. W. COGDELL,

Notary Public of the Bank of the State of South Carolina.

New Orleans, *24th March*, 1841.

No. 493. *Exchange for* $2,000 *dollars.*

Sixty days after sight of this first of exchange, second and third of same tenor and date unpaid, pay to the order of Alexander McDonald, esq., two thousand dollars for value received, and place the same to account of

(Signed) J. W. ZACHARIE & Co.

To F. C. Black, esq., *Charleston, S. C.*

(Endorsed) "ALEX. McDONALD."

No. 3—"C."

New Orleans, *February* 18, 1841.

No. 487. *Exchange for* $1,500 *dollars.*

Sixty days after sight of this first of exchange, second and third of same tenor and date unpaid, pay to the order of Alex'r McDonald, esq., the sum of fifteen hundred dollars for value received, and place the same to account of

(Signed) J. W. ZACHARIE & Co.

To F. C. Black, esq., *Charleston, S. C.*

(Endorsed) ALEX. McDONALD.

Protest.

United States of America,
City of Charleston, State of S. Carolina:

On the thirtieth day of April, one thousand eight hundred and forty-one, and in the sixty-fifth year of the independence of the United States of America, at the request of the president and directors of the Planters and Mechanics' Bank of South Carolina, I, Henry Morris, notary public and justice of the quorum, by letters patent under the seal of the State, duly commissioned and sworn, residing and practising in the city aforesaid, exhibited the original bill of exchange, a copy thereof on the other side written to F. C. Black, acceptor, and demanded payment thereof from him, who returned for answer that he could not pay said bill. Therefore I sent notice of the non-payment of said bill (demanding payment thereof) per mail to New Orleans, Louisiana, to J. W. Zacharie & Co. drawers, and served like notice on Alexander McDonald, endorser of the same.

Therefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest, against the drawers of the said bill, endorser, and endorsers, and all others concerned, for exchange, re-exchange, and all costs, damages, and interests, suffered and to be suffered, for want of payment of the said bill.

Thus protested in the city of Charleston, the day and year above written.

(Signed) HENRY MORRIS,
Notary public and Q. U.

New Orleans, *February* 18*th*, 1841.

No. 487. *Exchange for* 1,500 *dollars.*

Sixty days after sight of this first of exchange, (second and third of same date unpaid,) pay to the order of Alexander McDonald, esq., the sum of fifteen hundred dollars for value received, and place the same to account of

(Signed) J. W. ZACHARIE & Co.

To F. C. Black, esq., *Charleston, S. C.*

(Endorsed) ALEX'R McDONALD.

No. 4—"D."

New Orleans, *April 1st*, 1841.

No. 495. *Exchange for* 1,088 25 *dollars.*

Sixty days after sight of this first of exchange, (second and third of same tenor and date unpaid,) pay to the order of Alexander McDonald, esq., one thousand and eighty-eight dollars twenty-five cents, for value received, and place the same to account of

(Signed) J. W. ZACHARIE & Co.

To F. C. Black, esq., *Charleston, S. C.*

(Endorsed) ALEX'R McDONALD, (erased.)

Protest of above draft.

The State of South Carolina,
City of Charleston:

On this day, the fourteenth of June, A. D. one thousand eight hundred and forty-one, and in the sixty-fifth year of the independence of the United States of America, at the request of the president and directors of the Bank of the State of South Carolina, I, Richard W. Cogdell, justice of the quorum and notary public, by lawful authority duly sworn, admitted, and commissioned by letters patent under the great seal of the said State, residing and practising in the city of Charleston and State aforesaid, did exhibit the original bill, whereof a true copy is on the other side written, at the said bank, and demand payment of the same, which was refused for want of funds. I demanded payment of F. C. Black in person of the same; to which he answered, "I cannot pay the bill for want of funds." I gave notice of the non-payment personally to the endorser, Alexander McDonald, who answered, "I will attend to the payment of the bill to-morrow." I sent by mail to New Orleans notice of non-payment of the same for the drawers, James W. Zacharie & Co.

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly and publicly protest, against the drawer of the said bill, endorser, and endorsers, and against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered and sustained, or to be suffered or sustained, for want of payment of the said bill.

Thus done and protested at Charleston aforesaid, the day and year above written. In testimonium veritatis.

R. W. COGDELL,
Notary public of the Bank of the State of S. Carolina.

New Orleans, *April* 1, 1841.

No. 495. *Exchange for* $1,088 25.

Sixty days after sight of this first of exchange, (second and third of same tenor and date unpaid,) pay to the order of Alexander

McDonald, esq., one thousand and eighty-eight dollars twenty-five cents for value received, and place the same to account of

(Signed) J. W. ZACHARIE & Co.

To F. C. Black, *Charleston, S. C.*

ALEX'R McDONALD.

No. 5—"E."

[488.] New Orleans, *24th February*, 1841.

No. 487. *Exchange* $2,000.

Sixty days after sight of this first of exchange, (second and third of same tenor and date unpaid,) pay to the order of Mr. Alexander McDonald two thousand dollars for value received, and place the same to account of

(Signed) J. W. ZACHARIE & Co.

To Francis C. Black, esq. *Charleston, S. C.*

(Endorsed) ALEX'R McDONALD.

Protest.

The State of South Carolina,
City of Charleston:

On this day, the seventh of May, A. D. one thousand eight hundred and forty-one, and in the sixty-fifth year of the independence of the United States of America, at the request of the president and directors of the Bank of the State of South Carolina, I, Richard W. Cogdell, justice of the quorum and notary public, by lawful authority duly sworn, admitted, and commissioned by letters patent under the great seal of the said State, residing and practising in the city of Charleston and State aforesaid, did exhibit the original draft, whereof a true copy is on the other side written, at the said bank, and demanded payment of the same, which was refused for want of funds. I demanded payment of Francis C. Black, the acceptor of the same, who answered, "I cannot pay the draft." I gave notice of the non-payment of the same to Alexander McDonald, the endorser. I sent by mail to New Orleans notice of non-payment for the drawers of the draft, James W. Zacharie & Co.

Wherefore I, the said notary, at the request aforesaid have protested, and by these presents do solemnly and publicly protest, against the drawer of the said draft, endorser, and endorsers, and against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or sustained, or to be suffered or sustained, for want of payment of the said draft.

Thus done and protested at Charleston aforesaid, the day and year above written. In testimonium veritatis.

(Signed) R. W. COGDELL,
Notary public of the Bank of the State of S. Carolina.

NEW ORLEANS, *24th February*, 1841.

No. 488. *Exchange* $2,000.

Sixty days after sight of this first of exchange, (second and third of same tenor and date unpaid,) pay to the order of Mr. Alexander McDonald two thousand dollars for value received, and place the same to account of

(Signed) "J. W. ZACHARIE & Co."

To FRANCIS C. BLACK, *esq.*, *Charleston*, *S. C.*

(Endorsed) ALEX'R McDONALD.

Afterwards, to wit, on the 28th day of December, 1841, the following exceptions and answer of F. C. Black, to the petition of plaintiff, was filed:

J. W. ZACHARIE & Co.
vs.
FRANCIS C. BLACK.

And now into the ninth circuit court of the United States, for the eastern district of Louisiana, comes Francis C. Black, the defendant in said suit, by his attorneys, and excepts to the order and writ of attachment granted therein, to the petition and the demand therein made, and for cause of exception, avers that at the institution of said suit the plaintiffs therein had no cause of action whatever against this defendant, and that no debt was at the date of said suit due by defendant to said plaintiff, all of which is apparent by the petition of said plaintiff, and the account and bills of exchange annexed and referred to; wherefore defendant prays that said writ of attachment be set aside and dismissed, and that said suit be dismissed.

But if the said exception be overruled, then this defendant answers to said suit, and denies all and singular the allegations in plaintiffs' petition contained, and denies specially being indebted to said plaintiffs as alleged in said petition; and defendant further pleads that the bank stock attached in this case was not, at the date of said attachment, the property of defendant, or liable to be attached for any debt by him owing, and that the said stock was then the property of James Chapman of South Carolina, who became the owner thereof under a trust deed for the benefit of all the creditors of defendant without distinction, executed in Charleston, South Carolina, on the 28th April, 1841, and that said stock was delivered to said Chapman before the issuing of the attachment in this case. Defendant further shows that the said trust deed was executed in due form of law in South Carolina, where defendant resides, and that the same is effectual to pass the said stocks both in said State where it was executed and in this State; and that before the attachment in this case, the plaintiffs were notified of said assignment, and that the Gas Bank and the Carrollton Bank were also notified of said assignment immediately after the execution thereof.

Wherefore defendant prays that plaintiffs' demand be dismissed.

(Signed) LOCKETT & MICON,
Attorneys for defendant.
ISAAC T. PRESTON,
Attorney for defendant.

And afterwards, to wit: on the 6th, 13th, 14th January, and the 4th, 5th, 9th, 11th and 14th of March, 1842, the following entries were made of record, to wit:

THURSDAY, *January* 6*th*, 1842.

The court met pursuant to adjournment—Present, hon. Theodore H. McCaleb, district judge. Hon. John McKinley, presiding judge, absent.

J. W. ZACHARIE & Co.
vs.
FRANCIS C. BLACK. } No. 874.

This cause came on this day before the court to be heard upon the exceptions of the defendants, George Strawbridge appearing for the plaintiffs, when, after hearing the evidence and arguments of counsel, the court took time to consider.

J. W. ZACHARIE & Co.
vs.
FRANCIS C. BLACK & CHAPMAN, intervenor. } No. 874.

On motion of Wm. C. Micon, esq., ordered that the two depositions de bene esse, now produced by them, be opened in open court.

THURSDAY, *January* 13*th*, 1842.

The court met pursuant to adjournment.

Present, Hon. Theo. H. McCaleb, district judge; the hon. John McKinley, presiding judge, absent.

J. W. ZACHARIE & Co.
vs.
FRANCIS C. BLACK. } No. 874.

The court having maturely considered the exceptions of the defendant to the plaintiff's petition, now order that the exceptions of the defendant be overruled.

FRIDAY, *January* 14*th*, 1842.

The court met pursuant to adjournment. Present, the hon. Theo. H. McCaleb, district judge; the hon. John McKinley, presiding judge, absent.

J. W. ZACHARIE & Co.
vs.
FRANCIS C. BLACK & CHAPMAN, intervenor. } No. 874.

By consent of counsel, the answer to Chapman's intervention is amended by striking out that portion of said answer following the word "assignments," and between the brackets, and inserting in lieu thereof "the said was made in fraud of the agreement between said Zacharie and Black."

FRIDAY, *March 4th*, 1842.

The court met pursuant to adjournment. Present, hon. Theo. H. McCaleb, district judge; hon. John McKinley, presiding judge, absent.

J. W. ZACHARIE & Co.
vs.
FRANCIS C. BLACK & CHAPMAN, intervenor.

On this day came the parties, by their attorneys—George Strawbridge, esq., appearing for the plaintiffs, and Wm. C. Micon and Isaac T. Preston, esqrs. for the defendants and intervenor—and thereupon came a jury, to wit: Wm. H. Brown, Frank Remicke, Etienne Manier, N. Harrington, P. A. Aubert, M. Bock, C. A. Labuzan, John Mitchell, Owen Cook, Charles Fondi, Daniel P. Ruff, and Thomas M. Doyle, who were sworn well and truly to try the issue and a true verdict give according to the evidence, when, after some considerable progress in the case, the further consideration thereof was postponed until to-morrow at 10 o'clock, A. M.

SATURDAY, *March 5th*, 1842.

The court met pursuant to adjournment. Present, hon. Theo. H. McCaleb, district judge; hon. John McKinley, presiding judge, absent.

J. W. ZACHARIE & Co.
vs. No. 874.
F. C. BLACK & CHAPMAN.

This case was this day resumed before the court and jury heretofore sworn, when the arguments of counsel being closed, the jury returned, under the charge of the court, to consider of their verdict, and soon returned the following verdict, which was ordered to be recorded, and is in the words and figures following, to wit: "We, the jury, find a verdict for plaintiff for the sum of eight thousand dollars.

(Signed) CHARLES A. LABUZAN, *Foreman*."

Wherefore, it is considered by the court that judgment be entered up in favor of the plaintiffs J. W. Zacharie & Co., and against the defendant, Francis C. Black, for the sum of eight thousand dollars, with cost of suit; that the petition of intervention of James Chapman, claiming the stocks of the Carrollton and Gas Bank attached in this case be dismissed at his cost.

WEDNESDAY, *March 9th*, 1842.

The court met pursuant to adjournment. Present, the hon. Theo. H. McCaleb, district judge; the hon. John McKinley, presiding judge, absent.

J. W. ZACHARIE & Co.
vs. } No. 874.
BLACK, CHAPMAN, intervenor.

On motion of W. C. Micon, esq., of counsel for defendant and intervenor, it is ordered that the plaintiffs show cause on Monday, the 14th March, at 10 o'clock, A. M., why a new trial should not be granted in this case, on the grounds that,

1st. The verdict is contrary to law and evidence.

2d. That the court erred in refusing to charge the jury without qualification, according to the 3d, 4th, 5th, 6th, and 7th instructions prayed by intervenor.

3d. That the verdict of the jury is contrary to the charge of the court as given.

FRIDAY, *March 11th*, 1842.

The court met pursuant to adjournment. Present, hon. Theo. H. McCaleb, district judge; hon. John McKinley, presiding judge, absent.

J. W. ZACHARIE & Co.
vs. } No. 874.
F. C. BLACK & CHAPMAN, intervenor.

By consent of counsel, the rule taken in this case by the defendants, to show cause why a new trial should not be granted, was taken up and argued by George Strawbridge, esq., for the plaintiffs, and W. C. Micon, esq., for the defendants, when, after hearing argument, the court took time to consider.

MONDAY, *March 14th*, 1842.

The court met pursuant to adjournment. Present, hon. Theo. H. McCaleb, district judge; hon. John McKinley, presiding judge, absent.

J. W. ZACHARIE & Co.
vs. } No. 874.
F. C. BLACK & CHAPMAN, intervenor.

The court having maturely considered the application of defendants' counsel for a new trial, do now order that the said rule be dismissed, and the new trial be refused.

And during the progress of the trial, to wit: on the 4th day of March, 1842, the following bill of exceptions was filed:

Zacharie & Co.
vs.
F. C. Black.

Be it known, that on the trial of this case, the plaintiffs offered in evidence the following bills of exchange, to wit:

1 of 17th Feb.,	protested 30th April, 1841	$1,500
1 of 18th "	" "	$1,500
1 of 24th "	" 7th May,	$2,000
1 of " March	" 3d June, 1841	$2,000
1 of 1st April,	" 14th " "	$1,088 $\frac{25}{100}$

And before said drafts were offered in evidence, it was proved by the testimony of a witness, that each of said drafts had been negotiated by the plaintiff; that the two drafts of $1,500 each were returned under protest, and taken up by the plaintiffs on the 7th May, 1841; the draft of $2,000, protested on the 7th May, was returned and taken up on the 17th May, 1841; the draft for $2,000, protested on the 3d June, 1841, was returned and taken up on the 10th June, 1841; and the draft for $1,088 $\frac{25}{100}$ was returned and taken up by the plaintiffs on the 30th June, 1841. And before the said drafts were offered in evidence, the said plaintiff also introduced the account sales marked "A;" the letter of the defendant on file, of date the 28th April, 1841; and the deed of assignment executed in Charleston on 28th April, 1841. All of which, to wit: the said bills of exchange, the account sales marked "A," the said letter, and the said assignment, are prayed to be taken as a part of the bill of exceptions; and the counsel for the defendant thereupon objected to the said bills of exchange as evidence in this case, and denied the plaintiffs the right to present them to the jury, on the ground that by said bills of exchange and said testimony connected therewith, it fully appeared that the indebtedness of defendant to plaintiff thus attempted to be proved arose after the institution of this suit, and said bills were consequently no evidence in this cause; but the said objection was overruled, and the plaintiffs were permitted to present the said dfts. and protests to the jury as evidence, and the defendant's counsel thereupon took this bill of exceptions. The plaintiff's petition and the account current annexed thereto had, before the said bills were offered, been read to the jury as pleadings, but not as evidence.

(Signed) THEO. H. McCALEB. [L. S.]

And on the 6th day of January, 1842, the following documents were filed in evidence by the plaintiffs in this case:

Letters of Francis C. Black to J. W. Zacharie & Co.

Letter A.

Charleston, *28th April,* 1841.

Dear Friend: The cruelty of fortune throws upon me the dreadful task of informing you that I can no longer protect my credit. In the horror produced by this situation, there is no circumstance more bitter than the disappointment which I am preparing for you by this communication. What can I do? Duty and conscience say—give up all, and make no preferences. I have determined to do so. The stocks in New Orleans and Mobile are assigned to James Chapman for the equal benefit of every person to whom I owe anything. The trifling amount of what I otherwise possess will be disposed of on the same principle as soon as the creditors can be consulted. Your power of attorney has been revoked. It is a sacrifice of feeling to the sense of justice, and if I know myself, I have done by you as I expect you would have acted if our fates had been reversed. The assignment is sent to Messrs. J. H. Leverich & Co., and you will see that if I have put you on the footing of my other creditors, I have done the same by all, and am your distressed and anxious debtor, as heretofore

Your friend,

(Signed) F. C. BLACK.

J. W. ZACHARIE, esq., *New Orleans.*

Your two drafts, $1,500 each, fall due on 30th inst.
" one " 2,000 " " 7th May.
" one " 2,000 " " 3d June.
" one " 1,088 " " 14th "

Letter "B."

CHARLESTON, 11*th March*, 1840.

Messrs. J. W. ZACHARIE & Co., *New Orleans.*

GENTLEMEN: I have to own receipt of your favor of the 28th ultimo, annexing account sales of salt and naval stores, net proceeds $778 05, which are found correct and passed to your debit, in conformity. The result of this small adventure leaves me a loss of one hundred dollars (without freight), which I did not expect. As advised in mine of the 7th instant, I *valued* on you yesterday at 60 days, favor A. G. Rose, esq., cashier, for the sum of $3,428 57, which I have no doubt will meet due honor; and as the same falls due you can redraw on me, when I hope exchange will be at par, or I may have an opportunity of remitting you more to my advantage. I am hourly expecting the Catherine from Havana. Please advise, immediately on receipt, what are the prospects of a freight to this port or elsewhere. Rice is now down to $2½ for very good quality; Louisiana sugars a drug—sales at 4½ a 4¾, with difficulty; dealers well supplied. Your most truly,

(Signed) F. C. BLACK.

Filed March 4th, 1842, and offered in evidence by plaintiff.

Letter "C."

CHARLESTON, 11*th January*, 1837.

DEAR ZACHARIE: On the 7th instant I addressed you, advising [you of] my intention to visit Havana about *about* the 1st proximo, and that I would probably draw on you for 10 a 11,000 dollars.

The present serves to advise, that on 9th instant I valued on your house at 90 days for eight hundred dollars, favor S. & M. Allen & Co.; and this day favor A. G. Rose, esq., cashier, for $10,416 87, at 90 days. The same I beg to recommend to your protection.

I calculated on funds being remitted to you from New York to meet these drafts, but in any event you shall not be inconvenienced. You hold 500 shares Carrollton stock on my account; should I be disappointed in not placing you in funds, you can very easily proceed to sell as much of the stock as will pay said drafts. However, I trust there will be no occasion for to resort to that mode; although if the stock should advance in price before the drafts fall due, it might be as well to sell.

I beg you will not neglect to address me at Havana.

Yours in haste, mo. truly,

(Signed) FRANCIS C. BLACK.

Filed March 4th, 1842, and offered in evidence by plaintiff.

Letter "D."

CHARLESTON, 19*th June*, 1840.

DEAR ZACHARIE: Your favor of the 19th April, also one from your firm dated 27th ult., came duly to hand, and I *refuse* you. I regret equally with you that any thing unpleasant should have occurred between us, but under the circumstances I could not do otherwise than complain, for I could not but feel it very keenly when I considered the long existing friendship between us. I have, however, no disposition to revive the subject, but let it be buried in oblivion, if no more said about it, as if a thing that never had occurred.

Our friend Edmonston arrived two days since, and was pleased to hear from him that yourself and family were all well.

This day I paid your drafts for $2,400 and $1,025—so you have now nothing at risk with me; and, as matters are at present, I cannot draw on you if I wished, for the Bank of Charleston decline taking exchange on 7th Place at any rate. I can, however, make use of your drafts on me, if you are willing to accommodate me by drawing them out as follows:

Dated 1st July, favor of James Chapman, 60 days after sight, for - - - - - - - - -	$1,568 70
Dated 1st July, favor of James Chapman, 75 days after sight, for - - - - - - -	1,216 49
Dated 30th June, favor of Thomas I. Kerr, 75 days after sight, for - - - - - - -	2,214 68
Dated 30th June, favor of Chs. Edm'ston, 60 days after sight, for - - - - - - -	1,640 78
	$6,640 78

I will esteem it a favor if you will forward them by return mail, or as soon after as possible.

If the Carrollton Bank have made any late statement of their affairs, I shall be pleased to receive it. When I think of it, that I have got myself so completely entrapped with that stock, I reproach myself for having allowed it, when, if I had kept quiet and not meddled [with] it, I would have been so much better off at this time.

I am, as ever, yours truly,

(Signed) F. C. BLACK.

Filed March 4th, 1842, and offered in evidence by plaintiff.

Letter "E."

CHARLESTON, *24th Sept.*, 1840.

J. W. ZACHARIE, esq.

MY DEAR FRIEND: I was indeed taken quite by surprise in receiving, per yesterday's mail, a letter from the cashier of the Carrollton Bank, which it seems was addressed to your care. I think proper to annex copy of that letter, with my reply. Is it not enough that I have been made to feel very keenly the want of my funds locked up in that stock for upwards of four years, without receiving one cent dividend, that I am made to feel my situation still more harassing, by requiring 10 per cent. every 30 days on the stock note.

What can I do, my dear friend, under such circumstances; for as to my paying up, I assure you it is quite impossible; I have therefore to entreat of you to use your influence with the board to grant me further indulgence, for it bears so extremely hard upon me that I cannot for a moment bring my mind to doubt but that they will cheerfully acquiesce—if not, I don't know what I shall do.

Oh! that I could realize that stock, how light of heart I should feel; whereas, as matters now stand, I feel miserable, although I exert myself to avoid it; yet it is a hard matter for me to prevent feeling a depression of spirits.

Will you be so kind as to inform me if your banks will resume specie payments generally before the new year. Now that there seems no doubt of *Harrison's* election, I hope and trust it may bring about a better state of things.

The drafts you sent me last having expired, I am induced to trouble you once more. Please send me in 3 drafts drawn at 60 days after sight—pay, to your own order, in sums of $2,018 20, $2,416, and $1,816 48, and oblige

Your most truly

(Signed) F. C. BLACK.

Filed and offered in evidence by plaintiff.

CARROLLTON BANK, *New Orleans*, 14*th Sept.*, 1840.

SIR: The directors, at their meeting of the 11th Sept. inst., resolved to curtail 15 per cent. of the original loans made on full paid stock, and 10 per cent. of the original loans made on the stock on which $50 per share have been paid, and that this curtailment be made every thirty days. To conform to this resolution, you will be pleased to make the requisite reduction on your stock note, and draw them at thirty, instead of sixty days, as heretofore.

Respectfully,
JOHN NICHOLSON, *Cashier*.

F. C. Black, *Charleston*.

Charleston, 23*d Sept.*, 1840.

Sir: I am this day in receipt of your favor of the 14th inst., advising that the direction of the Carrollton Bank had resolved to curtail 10 per ct. of the original loans made on the stock, on which $50 per share have been paid, and that this curtailment be made every thirty days.

In reply, I beg to assure you it is out of my power to comply with those resolutions, and when it is considered the severe loss that myself, with others, have suffered in holding that stock, without receiving any dividends for four years, I trust the board will fully appreciate my situation, and reconsider those resolutions, and not require me to perform what I am inadequate to at present.

(Filed, 4th March, 1842.)

Letter "F."

Macon, 13*th May*, 1837.

(Confidential.)

J. W. Zacharie, esq.

My Dear Friend: Having occasion to stop here for a few hours, I avail [myself] of the opportunity to announce to you the distressing intelligence of the stoppage of our friends in Charleston, which unfortunate event will result very seriously to my injury. I was shown a letter this day from Capt. Wellsman, of the 5th inst., giving this sad news. What I shall do now for relief, in the way of having a *good name* to offer as endorser, when I may want some accommodation, is what puzzles me; and again I anticipate some serious troubles with the bank. To add to my misfortunes, I am on C. E.'s paper, individually as endorser, for $9,000, which I suppose I shall have to provide for, or have my credit ruined. This is too severe a stroke for me, when coupled with my endorsements for the other, which I explained to you. In consequence of these troubles coming on me so quickly in succession, I am under the disagreeable necessity of entreating of you to make some arrangement whereby you can renew the note of $5,000, which you borrowed on my account; also, to arrange for the amount of Lafonta's note, due in June—for if you cannot make some arrangements, I am a ruined man. If you were to draw on me, of course your drafts would be accepted, but at maturity, I assure you, it would be impossible for me to take them up. I cannot describe to you, my best of friends, the anguish I am in, what with this sad news, and then to be compelled to ask this favor of you. I know you to possess a generous and noble heart, and trust I will not have forfeited your good feelings towards me, by thus not complying with my engagements to you. You know me well enough not to doubt for a moment that, were it in my power to obviate the disappointment, it would be done. I have the consolation, however, to know, that amidst all my troubles you cannot lose one dollar by me; for I consider the 600 shares of Carrollton stock fully sufficient to cover the amount of your liabilities. If I get some relief (which I expect) from my friend Jno. Rose, of New York, I shall be enabled to save myself from protest; my payments will commence about 1st June. Now, my good friend, let me hear from you promptly, and relieve my mind as to how you will arrange for the payment of your note.

Yours, most sincerely,

(Signed) F. C. BLACK.

I pray you to consider this letter in perfect confidence, and not file it among your business letters. I would wish it destroyed after perusal. With respect to your draft of $5,000, you may be sure I will make every sacrifice in order that it shall be paid. Amidst all my troubles, if I could only realize my Carrollton stock I would be easy. Whenever I think on that speculation it makes me mad, as it ought to have been sold out after the second instalment was paid in. Say not a word to young Castillo about my affairs.

(Filed, March 4th, 1842, and offered in evidence by plaintiff.)

Letter "G."

CHARLESTON, 11*th April*, 1840.

J. W. ZACHARIE, esq.

DEAR ZACHARIE: The several letters of your house, dated 19th and 22d March, and 5th instant, are at hand, and I must confess, when I review their contents, I am so completely staggered, that I feel myself almost unable to reply. I notice your having accepted my draft for $3,428 $\frac{57}{100}$, but, at the same time, it is clear you evince much uneasiness, which I regret very much to observe. The following extract from your last, I now *quote* for your government, assuring you that I was never more astonished in all my life: "We have too much good feeling for you, to have permitted your draft on us to have been noted, but, in these critical times, self-preservation is the first consideration, and we beg that you will not do so again." Why, my good friend, can it be possible that you will, after having got me in so unfortunate a dilemma as to be a holder of Carrollton Bank stock, when you ought to have sold out my interest at the time you sold your own, now request me not to draw on you again? To be candid with you, I feel as if you were morally bound to use uncommon exertions to facilitate me to the utmost, for it is well known was I not laying out of that money, I *rec'd* neither have had occasion to draw on you, nor would I be worried in mind as I am at present. I have to pay a draft of yours for $1,450, on the 20th.

Don't be alarmed, I hope it will be paid, and I hope also to pay any further drafts that you may make on me. Your late letters have really caused me to feel quite sad and unhappy. I did not expect such remarks from you.

Yours, truly,

(Signed) F. C. BLACK.

Do you think I can get any satisfaction by visiting New Orleans and calling on the board of directors of Carrollton Bank, "en propria persona," and ask for information as to the actual condition of the bank?

Filed and offered in evidence by plaintiff.

Letters of J. W. Zacharie to F. C. Black.

Letter "A," filed and offered in evidence by defendant and intervenor.

New Orleans, *June* 10, 1835.

Dear Black: I stated in my letter to Messrs. C. Edmondston & Co. the reason I did not succeed in getting the stock of the Gas Bank, owing to my absence from the city, as the old directors only agreed to give up their places at the last hour, on condition of a certain company's taking the stock; and up to the last morning of the bank's being opened, there was but two thousand shares out of the sixty, and the thing was done so quietly that there was no suspicion of what was going on. Saml. Chapman, who obtained the secret from some clerk, went there about five minutes before the bank closed, and after fighting and scrambling got the book and wrote three names for 1,250 shares, and, by my direction, was about writing your, Mr. E., and my name for twelve hundred shares, when the book was jerked out of his possession, and he could not get it again. I wished Sam. to divide with you and Mr. E., but he declines, and says he can make his own arrangements without drawing on you for his instalments. It is now worth $2 per share premium. The Carrollton Railroad and Banking Company, of three millions capital, is yet not taken up, and as it is a fair charter, and in ——— opinion offers a fair speculation, there is a company making up to take [it,] and as we know it will be at a profit, (or rather think so,) I have authorized Pritchard to write your name, friend Edmonston's, and mine, for five hundred shares each. The banks are at present closed, but by agreement of the directors are to be reopened on a certain day, when P., by understanding, will watch the chance and take the ———. The company consists of the most wealthy persons of our city: Mr. Milladon two thousand shares, the Lexardies two thousand, and the stock falling in such hands, who of course will not sell at a loss, will make it certain. *When we have to pay up the instalments,* [*I*] *shall draw on you at as long sight as possible, and as we merely take it on speculation, at the maturity of our drafts, you can draw on us.* I trust you will approve of the speculation. For my part, [I] feel confident that we shall do well with it, there being so much less stock in this company than in the gas-light, and being in fewer hands, it will soon take the lead.

Yours, truly,
(Signed) J. W. ZACHARIE.

I send you a copy of the charter.

J. W. Z.

It is thought that the bank will not build the railroad, but at the expiration of the six years allowed them, will pay the tax of twenty thousand dollars, in six section.

J. W. Z.

Charter for seventy-five years is another favorable clause.

Filed March 4, 1842, and offered by defendant and intervenor.

Letter "B," [filed] and offered by defendant and intervenor.

New Orleans, *November* 15, 1837.

Dear Black: Yours of the 4th instant is just at hand, and I notice your remarks relative to our drawing, which I assure you I could not help, as the times here have become so extremely tight that it is with much difficulty we can meet our payments; we could not succeed in negotiating it, and had to send the first to our mutual friend Mr. Edmondston, with a request that he would have it discounted and remit us the amount by return mail, if practicable, as we have been compelled to borrow the amount in the mean time. I regret that it is out of my power to give you any encouragement in regard to Carrollton bank-stock. The bank has not done any bad business, but all descriptions of stock being dull of sale, and money so extremely scarce, that quotations are merely nominal. Gas is in no better order. We annex you a copy of our previous , a fit warrant showing a balance of \$5,412 $\frac{63}{100}$. *It is truly painful for me to think I have been in a measure the cause of your holding the Carrollton bank-stock, but as it was done with the best of intention, I am sure my dear friend you must acquit me of any censure.* Capt. Grayson is here, and promises to pay the \$200. You will find that we never included it in our account, as it was left in our loan column in the cash, calculating on its being refunded in a few days. Grayson calculates on selling his brig, which we think doubtful.

Yours, respectfully and sincerely,
(Signed) J. W. ZACHARIE.

Filed 4th March, 1842.

1012.

Letter "C," [filed] and offered by defendant and intervenor.

New Orleans, *May* 5, 1841.

Francis C. Black, esq.

Dear Sir: Yours of the 28th ultimo came to hand yesterday morning at the opening of the post office, and immediately after the shock writer experienced, he called on our attorney, and in less than ten minutes we had an attachment levied on your stocks, both of the Carrollton and Gas Banks, and am happy to say that our attorney assures us that we have *succeeded* it in spite of *our* assignment, which is worthless in our State, particularly as no transfer had taken place on the books of the bank; this course we feel satisfied you must approve of, as it certainly will relieve you from the very unhappy and truly inevitable dilemma of throwing upon your friend, who to serve you has, without compensation, accepted for your accommodation upwards of $3,000, a loss to that amount. A neglect to provide for this sacred and confidential debt, you could not be sustained in by your best friend; and indeed we cannot but believe you will be happy to learn the course we have pursued, and we now hope that your assignee will urge a *decission* as soon as practicable, as it is useless to procrastinate the matter longer than necessary. We have seen Messrs. Leverich & Co.'s attorney, and he assures us that he has not the most faint hope of defeating us, having *red* the copy of the assignment too late. Sales of Carrollton bank-stock took place three days since at auction, and brought $15 50 cts.; and Gas bank at $15, assignees' sale. We find in addition to the $3,088 25 cts., out of two drafts drawn on us for your accommodation, we have paid instalments and interest on stock-loan $739 55 cts., on the very stock you would deprive us of. Such conduct we must confess we could never expect of Francis C. Black, and the only atonement he can now make to us, is to urge upon his assignee not to give us any unnecessary delay in getting possession of the stock, by a procrastinated and useless law suit, as in these times, to be compelled to pay $8,100 suddenly, with scarcely a moment's notice, is almost enough to ruin any one.

Yours, respectfully,

(Signed) J. W. ZACHARIE & Co.

Filed March 4, 1842.

(Signed) HENNEN, *Clerk*.

Letter "D," [filed] and offered by defendant and intervenor.

Francis C. Black, esq.:

Dear Black: I have yours of the 4th inst., and note your decision relative to the proposed speculation in Texas lands. I have since disposed of an half to a neighbor. I differ with you in opinion as regards the value of the lands in the event of the United States not getting possession of Texas, as the people are determined to throw it under the government of old Spain, rather than submit it to Mexican authority again, when, with such a government as Cuba, they must prosper. Times in New York appear truly to be tough, but the storm must blow over shortly, as they cannot last. I sincerely hope that you do not feel it severely in your quarter; for our part we find matters becoming quite easy here, as our crops *being* abundant and has offered much relief; in drawing for your instalment on the Carrollton bank stock, payable in New York, we saved 1 per cent. in the exchange, as in Charleston any bank will not purchase under 3 per cent. discount. Should we not receive your answer by the 25th, will have to draw on you for the other instalment due then, and will do so; direct as you prefer it. Were the stock in my own name I could insist on having a discount, a pledge of stock, but the directors pretend to say that non-resident stockholders ought not to have the same privilege, and rather oppose it. As regards their affairs, I am satisfied they are well managed. Their cash. is not the most popular man, but he of course cannot be of any serious detriment to it. I should by no means recommend a sale, as if there is any improvement in southern stocks it must rise. *I had thought that my brother had replied to you as regards my stock, but have and find he has not; as long as I was able to hold on to it without inconvenience I did so, but being much in want of money in April, rather than be compelled to be asking favors of banks for discounts, or selling other property, I concluded to sell it, as there was another instalment just falling due, which I was not prepared to meet; it had been in February to $4 50, but I sold in April at $1, which I considered quite a sacrifice, and did not think ourselves authorized to do the same with yours, as we were fully under the opinion that it would do better by holding.*

Mr. Lightbaum, at our last dates, was at Raval, Mexico; he is married to quite a respectable young lady of the country, and is said to be worth $30,000 of his own saving. I have forwarded him numerous letters, of date from Havanna and Turk's Island. Mr. Puh writes us some time since, communicating the death of his uncle Mr. Bascaum. Report says Samuel Chapman is to [be] married shortly to Miss Frescott; she arrived here a few days since. He communicated the fact to my cousin Mary last spring under injunctions of secresy, which of course she did not divulge until Sam. had communicated it to others. Of late he has been extremely hard run, and I have been compelled through friendship (although he offered to pay us a commission, which I declined) to assist him, and have loaned him money and endorsed his drafts on you and his brother James, as he pledged me his word and honor he had ample means to get him through. I have, however, since seen in the hands of a broker several pieces of paper on which Sam. was the last endorser, offering at 1½ to 2 per cent. per month, which you know is not a very good sign. When he first called on me to endorse a draft on you, I positively refused; but on his pledging me his word and honor that he could get through, I thought from the great interest you take in him, that I would not be acting a friend's part to back out in a critical moment, which might throw him into ruin. He is certainly an excellent young man, without vice, but I have never had much confidence in his head for business; of course this is entre nous, and strictly confidential, as I would not injure him for the world.

Yours, truly,

(Signed) J. W. ZACHARIE.

(Filed March 4th, 1842,) and offered by defendant and intervenor.

Letter "E."

New Orleans, *July* 2, 1835.

Dear Black: My last advised you of my having authorized Pritchard to write you, and friend Edmondston's name with mine, for five hundred shares of the Carrollton Bank stock for each, which he did, and we gave our endorsed note, payable six months after date, for the first instalment, bearing seven per cent. interest. I am now happy to say that I was offered two dollars per share for the whole a few minutes since, and hope to get $5 before long; of course I shall not feel myself authorized to sell yours and friend Edmondston's before I hear from you, but may probably be induced to part with my own at $5; you must, consequently, authorize me, if you wish it sold, to do so. The gas stock is now selling at $12. The charter, as I said before, is an excellent one, but I cannot see any good reason for so great an advance before the bank is in *opporation*; in fact, I think the folks are mad, for we can readily attain good paper at ten per cent., having a year to run. Sam. Chapman sold his gas stock at 3½ and 4 advance. I thought him prudent, but he has certainly missed it, as, had he held it till now, he would have made $14,000 instead of $4,000. I am truly pleased to think that I should have succeeded in making a profitable business for you without positive authority, although I consider the authority of entering into any speculation a joint account, which friend Edmondston and yourself proposed when here last, in speaking of might, in a measure, warrant me in going into the stock for our mutual account, as I am well aware that you and friend Edmondston would rather suffer than permit me to lose under like circumstances. The tract I sold, or rather purchased, for friend E. is now worth $1,000 cash. I am endeavoring to purchase the adjoining ones, but have not yet come to any conclusion. Shall write him by next mail on the subject, and will then Carrollton, which will, no doubt, be up higher.

With best respects to Mrs. B., I am yours, sincerely,

(Signed) J. W. ZACHARIE.

Filed March 4th, 1842, and offered in evidence by defendant and intervenor.

Miscellaneous letters.

Letter (marked) "A."

BANK OF SOUTH CAROLINA,
Charleston, 16*th April*, 1841.

DEAR SIR: Enclosed I beg leave to send a certificate for five hundred shares in the Gas Light and Banking Company, No. 225, standing in the name of C 10 Francis C. Black upon the books of that institution, together with his special power to yourself, herewith also enclosed, for the purpose of transferring the said 500 shares to the Bank of South Carolina, to which I beg leave to request your immediate attention; after which you will send us the new certificate by mail, addressed to myself, cashier of the Bank of S. C., and oblige,

Being, respectfully,
Your obedient servant,
(Signed) THOMAS CHAPMAN, *Cash.*

To the CASHIER of the Gas Light and Banking Company, New Orleans, Louisiana.

Filed March 4th, 1842. Offered in evidence by defendant and intervenor.

Letter "B."

CARROLLTON BANK,
New Orleans, 7*th May*, 1841.

GENTLEMEN: Your application, of date 5th inst., to transfer six hundred shares and stock, standing in the name of F. C. Black, by virtue of a power from James Chapman as his assignee is noted. The transfer cannot be allowed, because that said stock has been attached at the suit of J. W. Zacharie & Co., served on the 4th inst., and also for the reason that said stock is pledged to this bank for a stock loan.

Very respectfully,
(Signed) JOHN NICHOLSON, *Cashier.*

Messrs. J. H. LEVERICH & Co., *New Orleans.*

(Filed March 4th, 1842,) and offered in evidence by defendant and intervenor.

Letter "C."

NEW ORLEANS, 5*th May*, 1841.

J. W. HOUSTON, esq.,
Cashier Gas Light and Banking Company.

SIR: By virtue of a power vested in me by James Chapman, of Charleston, S. C., as the appointed assignee of Francis C. Black of same place, we request that you transfer five hundred shares of the stock of the bank from F. C. Black to James Chapman, as his assignee.

If there are any objections you will please state them, and the causes for the objections, and oblige your obedient servant,

(Signed) J. H. LEVERICH.

(Filed March 4th, 1842)—offered in evidence by defendant and intervenor.

Letter "D."

GAS LIGHT AND BANKING CO.,
New Orleans, May 5th 1841.

Messrs. JAMES H. LEVERICH & Co.

GENTLEMEN: In answer to your note of this date, I have to say, that on the 22d ult. I received a letter from J. Chapman, cashier of the Bank of South Carolina, covering a certificate of 500 shares of the stock of this institution, in favor of Francis C. Black, together with a power from said Black to me to transfer the stock to the Bank of South Carolina; that said power being not considered sufficiently formal, (although it might be thought so by persons less rigid than myself in matters of the kind,) was returned to the Bank of S. C., with the remark, that upon another being furnished in conformity with corrections which were stated on the face of the one returned, the desired certificate would be transmitted.

On the 4th inst. a notice of seizure, of all effects or property of said Black in this bank, under an attachment was served; consequently, under all these circumstances, we cannot consent to the transfer requested in your note, but must hold the stock, subject to the decision of the courts.

Respectfully your obedient servant,
(Signed) J. W. HOUSTON, *Cashier.*

Offered in evidence by defendant and intervenor.

Other documents filed as evidence in this suit.

U. S. CIRCUIT COURT,
9th circuit, E. D. La:

J. W. ZACHARIE & Co.
vs. } No. 874.
F. C. BLACK.

The defendant and intervenor in this case is hereby notified that this case is fixed for trial for Friday, the 14th day of January, A. D. 1842, at 10 o'clock A. M., by order of the court.

Witness my hand and the seal of the court, the 27th day of December, A. D. 1841, and of the independence of the United States the 66th year.

(Signed) DUNCAN N. HENNEN, *Clerk.*

To Messrs. LOCKETT & MICON, esqs.,
Attorneys for Deft.

The drafts for which oyer was prayed for were filed this day.

Received, Dec. 27th, 1841, and same day served a copy of the within notice for trial, on Lockett & Micon, esqs., in person, by handing same to Wm. C. Micon, esq.

(Signed) A. S. ROBERTSON, *U. S. M.*
By W. K. STILES, *Dy. U. S. M.*

Sales of 125 *hhds. sugar and* 182 *bbls. molasses, received per brig Catharine, Captain Bonney, from N. O., consigned by Messrs. J. W. Zacharie & Co., net proceeds subject to their order, for account of whom it may concern.*

1841			
Jan. 25.	J. M. Shackelford, a 4 mo's.		
	V 182 bls. molasses 6453, 381, 6072 gls. a 27 c.	1,639 44	
	Less 2 p. c. for cash	32 78	$1,606 66
	3 bls molasses leaked out on board.		
27.	J. M. Shackelford, a 4 mo's.		
	V 33 hhds sugar 47,580 G. 5947 R. 41,633 lbs.		
	net a	$6	2,497 98
28.	R. S. Millar, a 4 mo's.		
	V 7 hhds sugar 9,803, 1225, 8578 lbs. net	6½	557 57
29.	E. L. Levy, a 4 mo's.		
	V 40 hhds sugar 56,835, 7104, 49,731 net	6	2,983 86
	Cash 1 do do 1,228 net	6	73 68
April 9.	Abraham Tobias at auction.		
	V 44 hhds sugar 50,760		3,036 21
			$10,755 96
	CHARGES.		
	To freight and primage	784 87	
	" wharfage landing	35 92	
	" weighing 125 hhds. sugar	48 85	
	" gauging 182 bls. molasses	22 75	
	" cooperage on 28 hhds. sugar and 10 bls molasses	18 20	
	" cooperage on 25 hhds. sugar from store	14 12	
	" drayage and labor $8 50, advertising $5 75	14 25	
	" city tax on $7,719 75 a 20 per cent.	15 44	
	" storage for three months	45 00	
	Commission and guarantee on $6,039 41, a 5 per cent. $301 92		
	Commission on cash sales 4,716 55 a 2½ 117 91	419 88	
			1,419 28
	Net sales		$9,366 68
	Average due 27-30 April, 1841.		
	F. C. BLACK.		
	CHARLESTON, April 12, 1841.		
	E. E.		

$9,336 68.

Ent. D. B. 224.

Filed January 6, 1842, and offered in evidence by plaintiff.

(Signed) DUNCAN N. HENNEN, *Clerk.*

Sales on account Mr. Francis C. Black.

				1155				
J. F. Butt, 3 hhds. sugar				1370				
				1300				
				3825	3804			
				21	456	3348 a	7	$234 36
				1282	1275			
J. Haeslop, 1 "	do.			7	153	1122	6¼	75 73
				1293	1286			
F. Berner, 1 "	do.			7	154	1132	6⅛	69 33
			1542	2674	2660			
Porther & Sons, 2	do.		1332	14	319	2341	6	140 46
			1268	2579	2565			
Lannean, 2	do.		1311	14	308	2257	6	135 42
				1282	1275			
H. Slauron, 1	do.			7	153	1122	6¾	75 73
			1320	2676	2662			
C.W. Bingley, 2	do.		1356	14	319	2343	6¼	146 43
		1303	1292					
		1304	1390					
Millikin & Walton } 7	do	1238	1173	9000	8951			
		1300		49	1074	7877	6½	512 00
		1302		2682	2668			
Alex. Brown, 2	do.	1382		14	320	2348		152 62
		1202	1350					
		1307	1335	17532				
		1440	1310	91				
Chambers & Carson } 13	do.	1355	1390					
		1352	1275	17441				
		1390	1409	2093		15348	6⅜	978 43
		1417						
		1330	1282	13163				
		1352	1263	70	13093			
F. Lannean 10	do.	1233	1260		1571			
		1375	1285			11522	6⅜	734 53
		1360	1223					
44								$3,255 04

CHARGES.

To advertising	$5 85	
Porterage	1 87	
4 mo's. disc't on $2,224 96	44 49	
60 days " 386 98	3 87	
Commission and tax 5 per cent. E.	162 75	218 83
		$3,036 21

ABRAHAM TOBIAS,
Per A. L. TOBIAS.

CHARLESTON, *April* 9, 1841.

Filed Jan. 6th, 1842, and offered in evidence by plaintiff.

1015.

ZACHARIE,
vs.
BLACK.
} No. 874.

It is admitted that the certificate of the stock of the Carrollton bank, belonging to F. C. Black, is in the hands of the Carrollton bank, the said stock being pledged to the bank.

(Signed) GEORGE STRAWBRIDGE,
LOCKET & MICON,
for intervenor and defendant.

THE STATE OF SOUTH CAROLINA:

Know all men by these presents, that I, Francis C. Black, do make, constitute and appoint, the cashier of the New Orleans Gas Light and Banking Company, New Orleans, my true and lawful attorney, for me and in my name to transfer to the Bank of South Carolina, in the city of Charleston, S. C., five hundred shares of the stock of the said New Orleans Gas Light and Banking Company, standing in my name, as per certificate No. 225, with power also, an attorney or attorneys, under him for that purpose, to make and substitute, and to do all lawful acts for effecting the premises, hereby ratifying and confirming all that my said attorney, or his substitute or substitutes, shall do therein, by virtue thereof.

In witness whereof, I have hereunto set my hand and seal, this fifteenth day of April, in the year of our Lord one thousand eight hundred and forty-one.

(Signed) F. C. BLACK.

Sealed and delivered in the presence of
CHAS. L. EDWARDS.

Be it known, that on the 15th day of April, one thousand eight hundred and forty-one, and in the 65th year of the independence of the United States of America, before me, F. W. Bacot, notary public, by letters patent under the great seal of the State, duly commissioned and sworn, came F. C. Black above named, and acknowledged the foregoing power of attorney, to be his act and deed.

In testimony whereof, I have hereto set my hand, and affixed my seal of office at Charleston, in the State of South Carolina, the day and year last mentioned.

(Signed) J. W. BACOT, *Not. Pub.*

Filed March 4th, 1842, and offered in evidence by defendant and intervenor.

(Signed) HENNEN, *Clerk.*

THE STATE OF SOUTH CAROLINA:

Know all men by these presents, that I, Francis C. Black, do make, constitute and appoint, the cashier of the New Orleans Gas

Light and Banking Company of New Orleans, my true and lawful attorney, for me and in my name to transfer to "the Bank of South Carolina," in the city of Charleston, the five hundred shares of the stock of the said New Orleans Gas Light and Banking Company, standing in my name, and as per certificate No. 225, with power also, an attorney or attorneys under him for that purpose, to make and substitute, and to do all lawful acts for effecting the premises, hereby ratifying and confirming all that my said attorney, or his substitute or substitutes, shall do therein, by virtue thereof.

In witness whereof, I have hereunto set my hand and seal, this day of April, in the year of our Lord one thousand eight hundred and forty-one.

(Signed) F. C. BLACK.

Sealed and delivered in the presence of
THEO. B. MCCAY.

Be it known, that on the 30th day of April, one thousand eight hundred and forty-one, and in the 65th year of the independence of the United States of America, before me, J. W. Bacot, notary public, by letters patent under the great seal of the State, duly commissioned and sworn, came F. C. Black above named, and acknowledged the foregoing power of attorney to be his act and deed.

In testimony whereof, I have hereunto set my [hand] and affixed my seal of office, at Charleston, in the State of South Carolina, the day and year last mentioned.

(Signed) J. W. BACOT, *Not. Pub.*

Filed March 4, 1842, and offered in evidence by defendant and intervenor.

(Signed) HENNEN, *Clerk.*

STATE OF SOUTH CAROLINA:
City of Charleston:

Whereas I, Francis C. Black, have obtained a discount from the Bank of South Carolina on my promissory note, bearing date the 31st day of May, 1837, for the sum of twenty-one thousand seven hundred and fifty dollars, payable in sixty-one days from the date thereof, and to secure the payment of the said note, together with any other note or renewals thereon, upon which I may hereafter obtain a discount, I have delivered to Thomas Chapman, cashier of said bank, the under mentioned certificates of stock, belonging to me, viz: No. 225, five hundred shares in the capital stock of the New Orleans Gas Light and Banking Company, *a* $30 paid in, X 24; one hundred and fifty shares in the capital stock of the Planters' and Merchants' Bank of Mobile, *a* $75 paid in, which, with all my interest therein, I do hereby assign and transfer to the Bank of South Carolina for the purpose aforesaid, with all my right and power to sell and transfer the same, under authority and by virtue of these premises, in default of the payment of any of the aforesaid note or notes at maturity. And I do hereby direct, if necessary, that the said stock shall be sold and duly transferred upon the books of any of the institutions, or so much thereof as will be sufficient to pay the said note or notes, with all interest and expenses which may become due thereon.

In witness whereof, I have hereunto set my hand and seal this thirty-first day of May, in the year of our Lord one thousand eight hundred and thirty-seven.

(Signed) FRANCIS C. BLACK.

Sealed and delivered in the presence of
FRANCIS S. YATES.

Be it known, that on the eleventh day of May, A. D., 1841, before me, John Michel, notary public, residing in the city of Charleston, personally appeared Francis C. Black above named, and acknowledged the original of the above assignment and letter of attorney to be his act and deed, and Francis S. Yates, the witness, also acknowledged his signature.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the day and year aforesaid.

(Signed) JOHN MITCHELL,
Notary Public.

STATE OF SOUTH CAROLINA,
Charleston District.

I, John Mitchel, notary public, by letters patent under the great seal of the State duly commissioned and sworn, do hereby certify that the within assignment and letters of attorney is a just and true copy of the original, which I have examined and found correct.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Charleston, this eleventh day of May, in the year of our Lord one thousand eight hundred and forty-one.

(Signed) JOHN MITCHELL,
Notary Public.

THE STATE OF SOUTH CAROLINA:

By his excellency, JOHN P. RICHARDSON.

John P. Richardson, Governor and commander-in-chief in and over the State aforesaid.

To all to whom these presents shall come.

Know ye, that John Mitchell, esquire, whose seal and signature appear to the instrument of writing hereunto annexed, is one of the justices of the quorum assigned to keep the peace for the said State, and notary public, commissioned by letters patent under the great seal of the State.

Therefore, all due faith, credit and authority is and ought to be had and given to his proceedings and certificates as such.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the seal of the State, in the city of Charleston, and State aforesaid, the eleventh day of May, in the year of our Lord one thousand eight hundred and forty-one, and in the sixty-fifth year of the independence of the United States.

By the governor.

(Signed) M. LABORDE,
Secretary of State.

Filed and offered in evidence of defendant and intervenor.

The defendant prays the following instructions to the jury.

1st. That the drawing, negotiation, and acceptance of bills of exchange operate a complete transfer of the funds of the drawer in the hands of the acceptor, up to the amount of the bills so drawn and accepted.

2d. That after the negotiation and acceptance of such bills, the drawer ceases to be a creditor of the acceptor for amount thereof, and has no right of action against the acceptor for said amount.

3d. That the plaintiff's account annexed to this petition, in which the proceeds of sugar and certain advances are charged on one side, and certain bills of exchange are credited on the other, is an admission that said proceeds and advances constituted the final against which said bills were drawn.

4th. That if the jury believe, from the evidence before them, that such bills have been drawn, negotiated, and accepted, the said drawing, negotiation, and acceptance transferred to the payee of said bills so much of the said fund against which they were drawn as is represented by said bills.

5th. That if the jury believe, from the evidence before them, that at the date of the institution of this suit the plaintiff had drawn and negotiated such bills, and were not then the holders thereof, then the jury must reject from the plaintiff's demand the amount of said bills, although it should have been proved that subsequently to the institution of this suit, to wit, upon the return of said bills under protest, the plaintiffs took up the same, and became the owners thereof.

6th. That a suit upon an account, the items of which consist of the amounts of certain bills of exchange, and that a suit upon such bills cannot be maintained, unless the plaintiff in the suit is the holder of [the] bill at the date of the institution of his suit.

The intervenor prays the following instructions:

1st. That a bona fide assignment of property, by a debtor, for the equal benefit of all his creditors, is not unlawful, but is highly favored by the law.

2d. That the law presumes an assent of creditors to such an assignment, unless their dissent is proved, and that the creditors who assent, acquire from the date of the assignment an interest in the property which cannot be destroyed by a subsequent attachment of any single creditor.

3d. That from the date of the assignment the title of the assignor is divested, and the property assigned and delivered is not liable to attachment for his debts, and that bank stocks are incorporeal rights, the deriving of which passes by the delivery of the title or act of transfer.

4th. That if the certificates of the stocks are not in the possession of the owner, but in the possession of other persons, to whom he has pledged them, said owner may make a valid transfer, and an effectual and complete delivery of such stocks, by delivering to the vendee or assignee a written title to the same, and that such title passes all the *the* interest of the assignor.

5th. That the provisions, in the charters of the Carrollton and Gas Bank, to the purport that the transfer of stocks in those banks shall not be effectual or valid, until entered upon the books of the banks, are introduced solely for the protection of the interests of said corporations, and for purposes connected with the elections thereof; but that said provisions do not, in any wise, alter or affect the general laws touching the delivery of incorporeal rights or stocks in said banks.

6th. That a sale or assignment of stocks in said banks, and the delivering of the title to the same, makes the assignee or vendee the owner of the same, although the transfer should not have been entered upon the books of the bank, subject only to such rights or equities as said banks themselves may have or possess upon said stocks, and that the vendee or assignee may force the bank to enter such transfer upon their books.

7th. That if the jury believe, from the evidence before them, and especially from the act of assignment, and the depositions of witnesses, taken in Charleston, South Carolina, on file and offered in evidence, that on the 28th day of April, 1841, the defendant, being domiciliated in the State of South Carolina, and being indebted to sundry persons in the amount stated in said depositions, and being the owner of the 660 shares of the stock of the Carrollton Bank, and 500 shares of the stock of the Gas Bank, executed and delivered to the intervenor a deed of assignment of said stocks, bona fide, and for the benefit of all his creditors; that said stock was, after said date, attached by the plaintiffs; that no creditor is shown to have objected to said transfer, except the plaintiffs; that other creditors are proved to have accepted; that the certificates of said stock were not, on the date aforesaid, in possession of said defendant, by reason of his having pledged them respectively to the Bank of South Carolina and the Carrollton Bank; that then the delivery of said deed of assignment constituted a complete and legal delivery of said stocks to the intervenor for the benefit aforesaid; and the jury must find for the said intervenor.

8th. That if the jury believe from the evidence, and especially from the letter of plaintiffs, of date the 5th May, 1841, on file, that the plaintiff had been notified of the assignment made as aforesaid, and thereupon and afterwards levied an attachment, then that such attachment was invalid, and cannot be sustained.

9th. That the letters of F. C. Black, dated at Charleston, S. C., on the 11th January, 1837, and at Macon, Ga., on the 13th May, 1837, on file and in evidence, do not in law amount to a contract, agreement, or understanding that the stock of the Carrollton Bank should be held by plaintiffs as a security or pledge for the debt claimed by the plaintiffs in this suit, and that no such agreement between the defendant and plaintiff (if the jury believe that any such agreement existed) can avail in law against the intervenor in this case representing the other creditors, unless the jury find from the evidence that such agreement was made in the *former* of a pledge, as prescribed in act 3,125 of the Civil Code of Louisiana.

[The defendant and intervenor's bill of exceptions, taken to the charge of the judge, is copied in page 63—A, and here inserted.]

Page 63, A.—And afterwards, to wit, on the 5th March, 1842, the following bill of exceptions was filed:

Zacharie & Co. }
vs. } J. Chapman, intervenor.
F. C. Black. }

Be it known, that on the trial of this case, and after the argument, the counsel of defendant and the intervenor prayed the instructions of the court to the 'jury, to the purport of the written request on file, numbered from 1 to 6, for the defendant, and from number *No.* 1 to 9, for the intervenor; and the court having granted and given to the jury all the instructions prayed for, except those designated as Nos. 3, 4, 5, 6, and 7, prayed by the intervenor; and the court refused to give the said charges as demanded, but gave them with the qualification, as to all said instructions, that the delivery of the stock was not complete, and did not pass to the assignee, unless the transfer was entered upon the books of the bank; and that the laws of Louisiana alone, and not the laws of South Carolina, or the general commercial law of the United States, were to be regarded in the decision of this suit; to which qualification the counsel of the intervenor takes this bill of exceptions, and prays that said instructions, as prayed for, be taken as a part thereof.

(Signed) THEO. H. McCALEB,
March 5th, 1842. *U. S. Judge.*

The State of South Carolina:

This indenture, made this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and forty-one, between Francis C. Black, of Charleston, merchant, of the one part, and James Chapman, also of Charleston, merchant, of the other part:

Whereas, the said Francis C. Black is indebted in divers large sums of money to the persons named in the schedule hereto annexed, and is possessed of the stocks and securities formerly hereinafter mentioned, and, from misfortunes in business, is unable to meet his engagements by paying off the several demands of his said creditors as they became due, and is therefore desirous of providing for the payment of his creditors out of the funds hereinafter mentioned, as far as the same will go rateably, in proportion to their several demands.

Now this indenture witnesseth, that the said Francis C. Black, for and in consideration of the premises, and for and in consideration of the sum of one dollar to him in hand paid by the said James Chapman, the receipt whereof is hereby acknowledged, hath granted, assigned, transferred and set over, and by these presents doth grant, assign, transfer and set over, to the said James Chapman, five hundred shares in the capital stock of the New Orleans Gas Light and Banking Company, standing in the name of him, the said Francis C. Black, subject to a mortgage to the Bank of South Carolina hereinafter mentioned; also six hundred shares in the capital stock of the Carrollton Bank, New Orleans, standing in the name of him, the said Francis C. Black, subject to a mortgage to the Carrollton Bank for the payment of a debt originally six thousand dollars, due and owing by the said Francis C. Black to the said Carrollton Bank, the present amount of the said debt being not precisely known; also one hundred and seventeen shares in the capital stock of the Planters' and Merchants' Bank of Mobile, standing in the name of him, Francis C. Black, subject to the same mortgage to the Bank of South Carolina herein before mentioned, on which said mortgage there is now due about eight thousand dollars: to have and to hold all the said stocks, bank shares, and securities for moneys, to the said James Chapman, his executors, administrators and assigns, forever—in trust, nevertheless, to and for the following uses and trust, and to and for no other use and trust whatsoever, that is to say: in trust that the same James Chapman shall and will, with all convenient speed and despatch, sell and assign of the said stocks, at such times, and on such terms, as in his judgment may be most advantageous, for the most money that can be obtained for the same; and from the proceeds thereof to pay, in the first place, the amounts of the respective liens of the Carrollton Bank and Bank of South Carolina, out of the stocks respectively pledged to them; and after discharging the said liens, and the reasonable expenses in the execution of this trust, then to pay and apply the surplus to and among the creditors named in the schedule hereto annexed, in payment of their several demands, as far as the same will go, rateably and in proportion to their several amounts. And the said Francis C. Black doth covenant, promise and agree, to and with the said James Chapman, to furnish the said James Chapman with an account of the sums respectively due to the creditors aforesaid, as soon as an accurate statement thereof can be made. Provided, nevertheless, that if, by inadvertence or accident, any creditors of the said Francis C. Black have been omitted in the said schedule, the same shall not prejudice any such creditors; but upon notice being given of such debt, and satisfactory proof thereof made at any time before the distribution of the fund, such creditor or creditors, if any there be, shall be entitled to payment out of the moneys in the hands of the said James Chapman, arising from the property hereby assigned, rateably and in proportion with the other creditors of the said Francis C. Black; and the said Francis C. Black, for the more effectual performance and execution of the premises, hath nominated, constituted and appointed, and by these presents doth nominate, constitute and appoint, the said James Chapman his attorney, to transfer the said stocks on the books in which it may be proper for such transfers to be made; and in his name, and in the name of the said James Chapman as his attorney, to do and perform all such act and acts, for the due execution and discharge of the premises, as fully as he, the said Francis C. Black, could do if personally present; and one or more attorneys under him, the said James Chapman, for the purposes aforesaid, from time to time to make and appoint, and at his pleasure to revoke. And the said James Chapman, for himself, his heirs, executors and administrators, doth covenant and agree, to and with the said Francis C. Black, that he will well and truly discharge and fulfil all and singular the trust herein contained, and pay over the moneys that may come to his hands by reason of this assignment, in pursuance of the directions herein contained, and account for all his actings and doings in the premises, whenever, by the said Francis C. Black, or by any other person or persons thereunto duly authorized, he shall be reasonably required.

In witness whereof, the said parties have to these presents, executed in triplicate, interchangeably set their hands and seals, the day and year first above written.

(Signed) F. C. BLACK, [SEAL.]
JAMES CHAPMAN. [SEAL.]

Sealed and delivered in the presence of
(Signed) J. L. BENJORD,
JOHN T. REID.

Schedule of creditors referred to in the foregoing deed.

Estate James H. Merritt,
Thomas Chapman,
John Kirkpatrick & Co.,
Charles Edmonston,
James Welsman,
James Chapman,
F. Winthrop,
Samuel Burger,
Jas. W. Zacharie & Co. N. Orleans.
John Rose, New York,
DeConick, Spalding & Co. Havana
Drake, Brothers & Co., do.
Gregorio Cosio, do.

(Signed) F. C. BLACK, [SEAL.]
JAMES CHAPMAN, [SEAL.]

By the Hon. Jacob F. Mintzing, mayor of the city of Charleston:

Be it known that, on this day, Francis C. Black and James Chapman of Charleston, merchants, who are well known to me, personally came and appeared before me at the city hall, in the city of Charleston, and acknowledge their hands and seals to the before written instrument of writing, and that the same is their act and deed. Also, came and appeared before me, James Lewis Petigru, of Charleston, who being duly sworn, deposeth and saith, that he was present and saw the said Francis C. Black and James Chapman execute the said instrument of writing, and that he, this deponent, and John T. Reid of Charleston, subscribed their names as witnesses thereto.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the city of Charleston to be hereunto affixed, at Charleston, this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and forty-one.

[L. S.]

(Signed) JACOB F. MINTZING, *Mayor*.

Filed December 28th, 1841, and offered in evidence by plaintiff and intervenor.

Copy of depositions de bene esse, filed the 4th of March, 1842, and read in evidence on the trial of this cause, by the intervenor and defendant.

THE UNITED STATES OF AMERICA,
South Carolina District, sct:

In a certain case pending in the Circuit Court of the United States of America, for the ninth circuit, in the eastern district of Louisiana, at New Orleans, wherein J. W. Zacharie & Co. are plaintiffs, and Francis C. Black is defendant, [and] James Chapman intervenor.

I, Robert B. Gilchrist, judge of the United States for the district of South Carolina, at the instance of the said James Chapman, the intervenor in the said suit, have caused Francis S. Yates, who resides in the city of Charleston, in the state of South Carolina, more than one hundred miles from the city of New Orleans, to come before me at the city of Charleston aforesaid; and the said Francis S. Yates having been by me carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, and doth depose and say, that he is about forty-one years of age; that he is the discount clerk in the Bank of South Carolina, in the city of Charleston aforesaid. That he was present on the thirty-first day of May, in the year of our Lord one thousand eight hundred and thirty-seven, at the execution of the instrument of writing hereto annexed; that he then saw the said Francis C. Black, whose name appears to the said instrument of writing, sign, seal, and delivered the same as his act and deed, for the purpose therein mentioned, Mr. Black acknowledging at the time, the letters [L. S.] attached to his name in the said paper, to be his seal, and that he, the said witness, subscribed his name to the said paper as a witness to the execution of the same. That he saw the annexed instrument of writing delivered by Mr. Black to Mr. Thomas Chapman, the cashier of the said Bank of South Carolina, at the time of the execution thereof, and is satisfied that the stocks mentioned in the said instrument of writing were then pledged to the said bank as is therein stated, and knows that Mr. Black on the aforesaid thirty-first day of May, in the year eighteen hundred and thirty-seven, obtained a discount from the said bank on his promissory note for twenty-one thousand seven hundred and fifty dollars, payable in sixty-one days from the date thereof, as is mentioned in the said instrument of writing; that he did not see the certificates of stock, mentioned in the said instrument of writing, delivered by Mr. Black to Mr. Thomas Chapman, the said cashier, but has no doubt that they were delivered to the said Thomas Chapman, at the time of the execution of the said instrument of writing, as Mr. Black then obtained the above mentioned discount, and as it is the invariable usage of the Bank of South Carolina to have in possession the certificates of stock upon which loans are obtained before such loans are granted. That there is now due by Mr. Black, to the said Bank of South Carolina, the sum of eight thousand dollars, besides interest on the loan obtained by him on the pledge of the stock mentioned in the annexed instrument.

(Signed) FRANCIS S. YATES.

And I, the said Robert B. Gilchrist, judge as aforesaid, do hereby certify, that I am not of counsel or attorney to either of the said parties, or interested in the event of the said cause. I further certify, that the said J. W. Zacharie & Co. have no agent or attorney known to me within one hundred miles of Charleston, the place of taking the said deposition, nor are the said J. W. Zacharie & Co. known to me to be within one hundred miles of the same place, and no notice of the taking of this testimony has, for that reason, been served on the said J. W. Zacharie & Co., or their attorney, and that the said testimony was reduced to writing by me, and by the said witness subscribed in my presence.

Given under my hand and seal at the city of Charleston, in the district of South Carolina, this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and forty-one.

(Signed) R. B. GILCHRIST,

Judge of the United States for the district of South Carolina.

STATE OF SOUTH CAROLINA,
City of Charleston.

Whereas I, Francis C. Black, have obtained a discount from the Bank of South Carolina on my promissory note, bearing date the

31st day of May, 1837, for the sum of twenty-one thousand seven hundred and fifty dollars, payable in sixty-one days from the date thereof, and to secure the payment of the said note, together with any other note or renewals thereon, upon which I may hereafter obtain a discount, I have delivered to Thos. Chapman, cashier of said bank, the undermentioned certificates of stock belonging to me, viz: No. 225, five hundred shares in the capital stock of the New Orleans Gas Light and Banking Co. a $30 paid in, 24 X; one hundred and fifty shares in the capital stock of the Planters' and Merchants' *and* Bank of Mobile a $75 paid in; which, with all my interest therein, I do hereby assign and transfer to the Bank of South Carolina for the purpose as aforesaid, with all my right and power to sell and transfer the same under authority and by virtue of these premises, in default of the payment of any of the aforesaid note or notes at maturity. And I do hereby direct, if necessary, that the said stock shall be sold and duly transferred upon the books of any *of any* of the institutions, or so much thereof as will be sufficient to pay the said note or notes, with all interest and expenses which may become due thereon.

In witness whereof, I have hereunto set my hand and seal, this thirty-first day of May, in the year of our Lord one thousand eight hundred and thirty-seven.

(Signed) FRANCIS C. BLACK, [L. S.]

Sealed and delivered in the presence of
(Signed) FRANCIS S. YATES.

Depositions de bene esse filed and read in evidence by defendant and intervenor.

THE STATE OF SOUTH CAROLINA.

This [indenture] made this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and forty-one, between Francis C. Black, of Charleston, merchant, of one part, and Jas. Chapman, also of Charleston, merchant, of the other part.

Whereas the said Francis C. Black is indebted in divers large sums of money to the persons named in the schedule hereto annexed, and is possessed of the stocks and securities for money hereinafter mentioned, and from misfortunes in business is unable to meet his engagement by paying off the several demands of his said creditors as they become due, and is therefore desirous of providing for the payment of his creditors *of* the funds hereinafter mentioned, as far as the same will go, rateably in proportion to their several demands.

Now this indenture witnesseth, that the said F. C. Black, for and in consideration of the premises, and for and in consideration of the sum of one dollar to him in hand paid by the said James Chapman, the receipt whereof is hereby acknowledged, hath granted, assigned, transferred, and set over, and by these presents doth grant, assign, transfer, and set over, to the said James Chapman, five hundred shares in the capital stock of the New Orleans Gas Light and Banking Company, standing in the name of him the said Francis C. Black, subject to a mortgage to the Bank of South Carolina hereinafter mentioned; also six hundred shares in the capital stock of the Carrollton bank, New Orleans, standing in the name of him, Francis C. Black, subject to a mortgage to the Carrollton Bank for the payment of a debt originally six thousand dollars, due and owing by the said Francis C. Black to the said Carrollton Bank; also one hundred and seventeen shares in the capital stock of the Planters' and Merchants' bank of Mobile, standing in the name of him, the said Francis C. Black, subject to the same mortgage to the Bank of South Carolina hereinbefore mentioned, on which said mortgage there is now due about eight thousand dollars; to have and to hold all the said stocks, bank shares, and securities for money to the said James Chapman, his executors, administrators, and assigns forever; in trust, nevertheless, to and for the following uses and trusts, and to and for no other use and trust whatsoever, that is to say: in trust that he, the said James Chapman, shall and will, with all convenient speed and despatch, sell and dispose of the said stocks at such time and on such terms as in his judgment may be most advantageous for the most money that can be obtained for the same, and from the proceeds thereof to pay in the first place the amount of the respective liens of the Carrollton Bank and Bank of South Carolina out of the stocks respectively pledged to them, and after discharging the said liens and his reasonable expenses in the execution of this trust, then to pay and apply the surplus to and among the creditors named in the schedule hereto annexed in payment of their several demands, as far as the same will go, rateably and in proportion to their several amounts.

And the said Francis C. Black doth covenant, promise, and agree, to and with the said James Chapman, to furnish him, the said James Chapman, with an account of the sums respectively due to the creditors aforesaid, as soon as an accurate statement thereof can be made.

Provided, nevertheless, that if by inadvertence or accident any creditors of the said Francis C. Black have been omitted in the said schedule, the same shall not prejudice any such creditors, but upon notice being given of such debt, and satisfactory proof thereof made at any time before the distribution of the fund, such creditor or creditors, if any there be, shall be entitled to payment out of the moneys in the hands of the James Chapman, arising from the property hereby assigned, rateably and in proportion with the other creditors of the said Francis C. Black. And the said Francis C. Black, for the more effectual performance and execution of the premises, hath nominated, constituted, and appointed, and by these presents doth nominate, constitute, and appoint, the said James Chapman his attorney, to transfer the said stocks on the books in which it may be proper for such transfer to be made, and in his name, or in the name of the said James Chapman, as his attorney, to do and perform all such act and acts for the execution and discharge of the premises as fully as he, the said Francis C. Black, could do, if personally present, and one or more attorney or attorneys under him, the said James Chapman, for the purposes aforesaid from time to time to make and appoint, and at his pleasure to revoke; and the said James Chapman for himself, his heirs, executors, and administrators, doth covenant and agree, to and with the said Francis C. Black, that he will, well and truly, discharge and fulfil, all and singular, the trusts herein contained, and pay over the moneys that may come to his hands by reason of this assignment, in pursuance of the directions herein contained, and account for all his actings and doings in the premises, whenever, by the said Francis C. Black, or by any other person or persons thereunto duly authorized, shall be reasonably required.

In witness whereof, the said parties have to these presents, executed in triplicate, interchangeably set their hands and seals, the day and year first above written.

(Signed) F. C. BLACK. [L. S.]
(Signed) JAMES CHAPMAN. [L. S.]

Sealed and delivered in presence of
J. L. Petigru,
John T. Reed.

Schedule of creditors referred to in the foregoing deed.

Est. Jos. H. Merritt,	Charleston, S. C.
Thos. Chapman,	do.
John Kirkpatrick & Co.,	do.
Chas. Edmonston,	do.
Jas. Welsman,	do.
F. Winthrop,	do.
James Chapman,	do.
Samuel Burgen,	do.
J. W. Zacharie & Co.,	New Orleans.
John Rose,	New York.
DeConinck, Spalding & Co.,	Havana.
Drake, Bros. & Co.,	do.
Gregorio Cosio,	do.

(Signed) F. C. BLACK,
JAS. CHAPMAN.

Filed March 4, 1842, and read in evidence by defendant and intervenor.

United States of America,
District of South Carolina, sct:

In a certain case pending in the circuit court of the United States of America, for the ninth circuit, in the eastern district of Louisiana, at New Orleans, wherein J. W. Zacharie & Co. are plaintiffs, and Francis C. Black is defendant, James Chapman, intervenor, I, Robert B. Gilchrist, judge of the United States for the district of South Carolina, at the instance of the said James Chapman, the intervenor, have caused James Louis Petigru, esq., counsellor at law, and formerly attorney general of the State of South Carolina, Edward McCrady, esq., counsellor at law and United States attorney for South Carolina, and Henry Bailey, esq., counsellor at law and attorney general for said State, who reside in the city of Charleston, in the State of South Carolina, more than one hundred miles from the city of New Orleans, to come before me at the city of Charleston aforesaid; and the said James L. Petigru having been by me examined carefully, and cautioned, and sworn to testify the whole truth, did depose and say, and doth depose and say, that on the twenty-eighth day of April, in the year eighteen hundred and forty-one, Francis C. Black, of the city of Charleston aforesaid, merchant, executed an assignment to James Chapman, of the same place, by deed, in triplicate; one of the said triplicates was forwarded immediately to New Orleans, another to Mobile, and the third is now here produced by the said witness, (the paper hereunto annexed, marked "A," being a true copy thereof;) and Francis C. Black and James Chapman aforesaid, signed and sealed the said deed in presence of the witness and John T. Reid, his clerk, who is now in the city of Washington, and the said deed was then and there delivered by the said Francis C. Black to the said James Chapman; and that the said witness and John T. Reid also saw the said parties, at the same time, sign the schedule annexed to the said deed, which deed appears, by the certificate of the Secretary of State, to have been recorded on the eighth day of May, in the year eighteen hundred and forty-one, upon the oath of the aforesaid John T. Reid; that he, the witness, has examined the original books of account of Francis C. Black, to ascertain the sums due to the creditors named in the said schedule, and he finds in the leger of the said Francis C. Black, an account stated, between him and Gregorio Cosio, on which a balance appears to the credit of said Gregorio Cosio of nine hundred and seventy-four dollars ($974 $\frac{74}{100}$) and seventy-four cents; and at page 28, of the same leger, an account stated, between the said Francis C. Black and the estate of James Curry, of which estate the said Francis C. Black is executor, in which account a balance appears to the credit of the estate of the said James Curry of four hundred and twenty-nine dollars [and] 72 cents, ($429 $\frac{72}{100}$;) and at page 76, of the same leger, an account stated, between the said Francis C. Black and the aforesaid J. W. Zacharie & Co., of eight thousand one hundred and forty-four dollars [and] 88 cents, (\$8,144 $\frac{88}{100}$;) and at page 140, of the same leger, an account stated, between the said Francis C. Black and DeConnick, Spalding & Co., of Havana, in which a balance appears to the credit of the said DeConnick, Spalding & Co. of two thousand two hundred and fifty-three dollars [and] 55 cents, (\$2,253 $\frac{55}{100}$;) and at page 150, of the same leger, an account stated, between the said Francis C. Black and Drake, Brothers & Co., of Havana, in which a balance appears to the credit of the said Drake, Brothers & Co. of two thousand six hundred and seventy-seven dollars and 44 cents, (\$2,677 $\frac{44}{100}$.) And in the bill book of the said Francis C. Black, under date 1st July, 1840, a note is noted, payable by the said Francis C. Black to the estate of James H. Merritt, Thomas Chapman, administrator, for four thousand two hundred dollars, (\$4,200.) And in the same bill book, entries of notes payable by the said Francis C. Black to Thomas Chapman, amounting to nine thousand six hundred dollars, (\$9,600,) that is to say, under date 6th March, 1841, one note for three thousand two hundred dollars, (\$3,200;) under date 15th March, 1841, one other note for seven hundred dollars, (\$700;) under date 17th April, 1841, one other note for four thousand five hundred dollars, (\$4,500;) and under date 21st April, 1841, one other note for twelve hundred dollars, (\$1,200.) And in the same bill book, entries of notes payable to C. Edmonston, amounting to five thousand three hundred and forty-eight dollars and 65 cents, (\$5,348 $\frac{65}{100}$,) that is to say, one note under date 24th April, 1841, for two thousand dollars, (\$2,000;) under date 27th April, 1841, one note for two thousand three hundred and forty-eight dollars [and] 65 cents, (\$2,348 $\frac{65}{100}$;) and under date 18th March, 1841, one other note for one thousand dollars, (\$1,000.) And in the same bill book entries of notes payable to James Welsman, amounting to three thousand five hundred and fifty dollars [and] 45 cents, (\$3,550 $\frac{45}{100}$,) that is to say, one note under date 9th February, 1841, for one thousand five hundred and eighty-four dollars [and] 27 cents, (\$1,584 $\frac{27}{100}$;) and under date 8th March, 1841, one other note for one thousand nine hundred and sixty-six dollars [and] 18 cents (\$1,966 $\frac{18}{100}$.) And in the same bill book an entry of a note payable to J. Kirkpatrick & Co., under date 9th March, 1841, for two thousand four hundred and seventy-eight dollars [and] 64 cents, (\$2,478 $\frac{64}{100}$.) And in the same bill book entries of notes payable to James Chapman, amounting to two thousand eight hundred and ninety-five dollars [and] 8 cents, (\$2,895 $\frac{8}{100}$,) that is to say, one note under date 9th March, 1841, for eight hundred and seven dollars [and] 90 cents, (\$807 $\frac{90}{100}$;) and under date 18th March, 1841, another note for two thousand and eighty-seven dollars [and] 10 cents, (\$2,087 $\frac{10}{100}$.) And in the same bill book, under date 19th April, 1841, an entry of one note, payable to Samuel Burger, for one thousand one hundred dollars, (\$1,100.) And in the same bill book, under date the 24th April, 1841, an entry of one note, payable to F. Winthrop, for two thousand three hundred dollars, ($2,300.) And that all the aforesaid notes, so entered as aforesaid, in the said bill book of the said Francis C. Black, are entered and posted in the leger hereinbefore mentioned, at page 158; and that as far as he, the witness, can judge, the aforesaid leger and bill book are kept in regular mercantile form, and exhibit a true state of the affairs of the said Francis C. Black at the date of his failure. That at the execution of the aforesaid deed of assignment, a circular was prepared to be sent, by the assignee of the said Francis C. Black, to all his creditors in Charleston; and that by the certificates hereunto annexed, and marked B and C, which he, the witness, knows to be genuine, being acquainted with the signatures of all the parties thereto, it appears that all the said creditors had notice, except the aforesaid C. Edmondston, who has given no certificate, in consequence of his absence from Charleston, but that he, the witness, knows that Mr. Edmondston was consulted as a creditor and a friend of the said Francis C. Black, about his assignment, and approved of it. That he, the witness, knows that the said Francis C. Black immediately advised the plaintiffs in this cause of his assignment, and that in consequence thereof, they laid their attachment, for he, the witness, has seen the letter of the said Francis C. Black to the said J. W. Zacharie and the answer to it, and he advised the assignee, as well as Mr. Black, to inform all the creditors immediately of what has been done. But by the law and usage of South Carolina, no act of the cestui que trust, or creditor in whose favor an assignment is made, is necessary either to entitle them to the benefit of its provisions, or give validity to the deed; and that the assignor and assignee were advised by the witness to give the creditors notice, because, in a business point of view, it is right and proper always to inform a correspondent or creditor of that which concerns his interest; and because, by an act of Assembly of this State, (statutes of South Carolina, vol. 6, page 365,) it is made the duty of an assignee to call the creditors together within ten days after the execution of the assignment, to appoint agents on their part, equal in number to the assignee, with equal authority in the execution of the trust; but if the assignee neglects his duty, the deed is not thereby invalidated, but the creditors may appoint their agents, and take the whole property out of the hands of the assignee, and apply the same according to the provisions of the deed.

And the witness says that he has practised in the courts of South Carolina for nearly twenty-nine years as a solicitor and counsellor, and he deems himself qualified to express an opinion on the law of South Carolina. That by the common law, as known and *administrated* in South Carolina, an assignment completely diverts the property from the execution of the deed, so that it cannot be questioned by the *assignee* himself, and if free from fraud, cannot be questioned by his creditors or any body else, and that though such assignment be made abroad, it passes the property of the debtor in South Carolina from the instant of its execution, and no subsequent attachment can disturb the right of the assignee. That this principle was *denied* as long ago as the year eighteen hundred and sixteen, in the case of Prime vs. Yates, (Treadway 770.) That the distinction between an assignment of the party and one by operation of law, was taken and recognised in Topham vs. Chapman, (1st Constitutional Report 283) decided in the year eighteen hundred and seventeen. That this decision was followed in Brown, vs. Minis (1 McCordy Reports 106,) though the point there was not considered one of any difficulty, the controversy in that case turning on other questions involved. But the very question between an assignment of property in South Carolina, executed in New York, in trust for creditors, and an attachment laid on the property of the assignor in South Carolina after the date of the assignment, was raised in West vs. Tapper, in the year eighteen hundred and twenty-nine, and was decided in favor of the assignment, in which case his honor, Judge Gilchrist, of the United States court, then at the bar, was of counsel for West, the assignee, (see 1st. Bailey, 193.) That the question was made again in Green vs. Maury, decided in the year eighteen hundred and thirty-one, and again decided that a bona fide assignment in trust for creditors (though made out of the State, and of the property within the State,) takes precedence of a subsequent attachment. That since that time the point has not, as far as witness knows, been questioned, although property to an immense amount has been passed by such assignments, and so well settled is the law on the subject, that if the situation of these parties was reversed, and the plaintiffs, by a bona fide assignment in Louisiana, had conveyed their property in South Carolina, whether consisting of real or personal estate, or choses in action for the payment of debts, no lawyer of reputation could be found to advise a creditor in this State to attempt to take the property by a subsequent execution or attachment. That in the case of the assignment of stocks, though they can only be transferred on the books of the bank itself, yet the assignee would be entitled to call for a transfer, and no creditor by any attachment subsequent to the deed of assignment could prevent the assignee from taking the stocks, and disposing of them according to the trusts of the deed, and that in the decision of the question, it is perfectly immaterial whether the assignee be in actual possession of the property assigned when such property is capable of manual delivery, or whether the transfer be completed on the books of the bank when the property is of such a nature as to require such transfer, for in all cases the right of property is in the assignee from the date of the deed, and there is nothing for the attachment to act upon.

(Signed) J. L. PETIGRU.

And the said Edward McCrady having been by me in like manner carefully cautioned, and examined, and sworn to testify the whole truth, did depose and say, that he has read the foregoing deposition of Mr. Petigru in relation to the law governing assignments and attachments in the State of South Carolina, and concurs fully in the opinion expressed by him. That he, this witness, has been practising in the courts of South Carolina as a solicitor and counsellor for more than sixteen years, and deems himself qualified to express an opinion on the law of South Carolina.

(Signed) EDWARD McCRADY.

And the said Henry Bailey, having been by me carefully examined, and cautioned, and sworn to testify the whole truth, did depose and say, and doth depose and say, that he has practised in the courts of South Carolina for more than eighteen years as a solicitor and counsellor, and that he deems himself qualified to express an opinion on the law of South Carolina; that he was State reporter for three years, and has held the office of attorney general of the said State for the last five years; that he has read the foregoing deposition of Mr. Petigru, and agrees with him in all the statements which he has there made as to the law of South Carolina; that no assent or other act on the part of the assignee, or cestui que trust, is necessary to give validity to an assignment for the benefit of creditors, unless such assent or act is made a condition precedent by the express provisions of the deed of assignment, in which case the conventional law of the parties supersedes the general law of the land; that the assignment takes effect from its execution, and although executed in a foreign country, prevails over a subsequent attachment or assignment in South Carolina; that this principle applies only to voluntary assignments by the debtor, and not to assignments by operation of the foreign laws of a country, such as the bankrupt law of England; that the cases cited by Mr. Petigru, in his foregoing deposition, are of unquestionable authority in South Carolina, two of which were reported by this witness when he held the office of State reporter; that the same principles have been recognised in various adjudications since, and are universally regarded by the bar of this State as settled and familiar law.

(Signed) H. BAILEY.

And I, the said Robert B. Gilchrist, judge as aforesaid, do hereby certify, that I am not of counsel or attorney to either of said parties, or interested in the event of said cause. I further certify, that the said J. W. Zacharie & Co. have no agent or attorney known to me, within one hundred miles of Charleston aforesaid, the place of taking the said depositions; has, for that reason, been served on the said J. W. Zacharie & Co., or their attorney; and that the said testimony was reduced to writing by me, and by the said witnesses subscribed in my presence.

Given under my hand and seal, at the city of Charleston aforesaid, in the aforesaid district of South Carolina, this eighteenth day of December, in the year of our Lord one thousand eight hundred and forty-one.

(Signed) R. B. GILCHRIST, [SEAL.]
Judge of the U. States for the district of South Carolina.

Document marked "B."

We were notified by James Chapman, assignee of F. C. Black, to attend a meeting of the creditors in the early part of May, 1841; but did not attend, being satisfied with Mr. Chapman, and supposing that he would do the best with the stocks assigned, of which he was assignee.

(Signed) SAM. BURGERS,
JOHN KIRKPATRICK & CO.,
JAMES WELSMAN.

CHARLESTON, 15*th December*, 1841.

B.

Paper deposed to at the taking of the annexed deposition of James L. Petigru.

(Signed) R. B. GILCHRIST.
Judge of the U. S. for the district of S. C.

Copy of document marked "C."

We, creditors of F. C. Black, were notified by James Chapman, assignee of F. C. Black, to attend a meeting of the creditors in [the] early part of May, 1841. We attended, and the assignment was laid before us, and we assented to Mr. Chapman's executing his trust, as soon as he could do so by an advantageous disposal of the stocks.

(Signed) THOMAS CHAPMAN,
F. WINTHROP.

CHARLESTON, 15*th December*, 1841.

"C."

Paper deposed to at the taking of the annexed deposition of James L. Petigru.

(Signed) R. B. GILCHRIST, *U. S. Judge.*

And afterwards, to wit, on the 24th day of March, 1842, the following petition, and bond for writ of error, was filed by the clerk of the United States circuit court in the office of the said court in and for the eastern district of Louisiana.

To the honorable the circuit court of the United States, in and for the eastern district of Louisiana.

The petition of Francis C. Black, who resides in Charleston, S. C., respectfully shows:

That your petitioner is informed, and verily believes, that there is error in the judgment of the circuit court of the United States, for the eastern district of Louisiana, rendered in the suit of J. W. Zacharie & Co. vs. your petitioner on the 19th day of March instant.

Wherefore, petitioner prays that a writ of error be allowed and granted, returnable to the Supreme Court of the United States, and here tenders his bond with security, according to law.

(Signed) LOCKETT & MICON,
Att'ys for Plt.

SUPREME COURT OF THE UNITED STATES :

J. W. ZACHARIE & Co.
vs.
FRANCIS C. BLACK.
} JAMES CHAPMAN, *Intervenor.*

Know all men by these presents, that we, Francis C. Black and James H. Leverich & Co., are held and firmly bound unto J. W. Zacharie & Co., their heirs, executors, and administrators, in the sum of five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated in the city of New Orleans, on this 22d March, 1842.

Whereas, the said Francis C. Black has prosecuted a writ of error to the Supreme Court of the United States, to reverse a judgment rendered, in the above entitled suit, in the circuit court of the United States for the eastern district of Louisiana.

Now, therefore, the condition of the above obligation is such, that if the above named Francis C. Black shall prosecute his said writ of error to effect, and answer all costs, if he shall fail to make good his plea, then this obligation to be void, otherwise to remain in full force.

(Signed) FRANCIS C. BLACK, [L. S.]
Per LOCKETT & MICON, *Att'ys.*
J. H. LEVERICH & CO., [L. S.]

Judge's Order.

Be it so, on the petitioners giving bond with J. H. Leverich & Co. as security, as the law directs, in the sum of five hundred dollars.

(Signed) THEO. H. McCALEB, *U. S. Judge.*

Petition of intervenor for writ of error.

To the honorable the circuit court of the United States, in and for the eastern district of Louisiana.

The petition of James Chapman, who resides in Charleston, South Carolina, respectfully shews: That petitioner is informed, and verily believes, that there is error in the final judgment of the circuit court of the United States, for the eastern district of Louisiana, rendered on the 17th day of March inst., upon the intervention of

10257.

your petitioner, in the suit of J. W. Zacharie & Co. vs. F. C. Black. Wherefore, your petitioner prays that a writ of error be granted in due form of law, and that the said writ operate supersedes of any further proceedings of J. W. Zacharie & Co., against the bank stock attached in said cause, and claimed by your petitioner as plaintiff in said intervention, until the final decision of the said cause in the Supreme Court of the United States.

(Signed) LOCKETT & MICON,
Attorneys for intervenor.

SUPREME COURT OF THE UNITED STATES:

J. W. ZACHARIE & CO.
vs. } James Chapman, intervenor.
FRANCIS C. BLACK.

Know all men by these presents, that we, James Chapman and James H. Leverich & Co., are held and firmly bound unto J. W. Zacharie & Co., their heirs, executors and administrators, in the sum of five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated in the city of New Orleans, on this 22d of March, 1842.

Whereas, the said James Chapman has prosecuted a writ of error to the Supreme Court of the United States, to reverse a judgment rendered in the above entitled suit in the circuit court of the United States, for the eastern district of Louisiana. Now, therefore, the condition of the above obligation is such, that if the said James Chapman shall prosecute his said writ of errror to effect, and answer all costs if he shall fail to make good his plea, then this obligation to be void, otherwise to remain in full force and effect.

(Signed) FRANCIS C. BLACK, [L. S.[
Per LOCKETT & MICON, *Att'ys.*
J. H. LEVERICH & Co.

A writ of error is allowed as a supersedeas, on petitioner's giving bond conditioned according to law, with J. H. Leverich & Co., on the same, of five hundred dollars.

(Signed) THEO. H. McCALEB, *U. S. Judge.*
March 28th, 1842.

And afterwards to wit, on the 29th day of March, 1842, the following entry was made:

The court met pursuant to adjournment: Present, honorable Theo. H. McCaleb, district judge. Honorable John McKinley, presiding judge, absent.

J. W. ZACHARIE & CO.
vs. } No. 874.
BLACK AND CHAPMAN.

On motion of George Strawbridge, esq., for plaintiffs, ordered, that so much of the order of this court as grants a supersedeas to the intervenor Chapman, on his giving bond in the sum of five hundred dollars, be annulled; the court being of opinion, that the stocks attached are not sufficient security for said writ of supersedeas.

Entry of April 1st, 1842.

The court met pursuant to adjournment: Present, honorable Theo. H. McCaleb, district judge. Honorable John McKinley, presiding judge, absent.

ZACHARIE & Co.
vs. } No. 874.
BLACK.

On motion of Lockett & Micon, of counsel of J. Chapman intervenor, it is ordered, that J. W. Zacharie & Co. shew cause on Wednesday morning next, at 10 o'clock, A. M., why the order of supersedeas granted upon the petition of said intervenor, and stricken out by the court, be not restored, on the ground that the bond filed by said intervenor is sufficient, and the order was properly granted.

Entry of April 6th, 1842.

The court met pursuant to adjournment—Present, honorable John McKinley, presiding judge; honorable Theodore H. McCaleb, district judge.

J. W. ZACHARIE, & Co.
vs. } No. 874.
F. C. BLACK & J. CHAPMAN, Intervenor.

The rule taken in this cause by the intervenor's counsel, to show cause why the order heretofore granted in this case, allowing a writ of error and supersedeas, on the intervenor giving bond on five hundred dollars should not be restored, was taken up and argued, and the court took time to consider thereon.

Entry of Friday, April 15th, 1842.

The court met pursuant to adjournment—Present, honorable John McKinley, presiding judge; honorable Theo. H. McCaleb, district judge.

J. W. ZACHARIE, & Co.
vs. } No. 874.
F. C. BLACK & CHAPMAN, Intervenor.

In this case, it is considered by the court that the rule taken by the intervenor, to show cause why the order of supersedeas allowed him on his giving bond with J. H. Leverich & Co., as securities, for five hundred dollars, should not be restored, be discharged at intervenor's costs, the court considering said bond as insufficient.

Clerk's certificate.

I, Duncan N. Hennen, clerk of the circuit court of the United States, ninth circuit, in and for the eastern district of Louisiana, do hereby certify, that the foregoing eighty-nine pages, and page 63 A, being bill of exceptions of defendant and intervenor, contain a full, faithful, and true transcript of the records, and proceedings, and evidence adduced on the trial of the case of J. W. Zacharie & Co. vs. F. C. Black and J. Chapman, intervenor, as far as the same now remains on file in the said court.

In testimony whereof, I have hereunto set my hand and the [SEAL.] seal of the said court, at the city of New Orleans, this 30th day of April, 1842, and the sixty-sixth year of the independence of the United States of America.

DUNCAN N. HENNEN, *Clerk.*

I, Theo. H. McCaleb, district judge of United States district court, for the eastern district of Louisiana, and one of the judges of the United States circuit court, ninth circuit, eastern district of Louisiana, do hereby certify, that Duncan N. Hennen is the clerk of the United States circuit court, ninth circuit, eastern district of Louisiana, and that due faith and credit are due to his acts as such, and that his certificate is in due form of law.

Witness my hand and seal, this 30th day of April, 1842.

THEO. H. McCALEB, *Judge, U. S.* [SEAL.]

UNITED STATES OF AMERICA, SS:

The President of the United States, to the honorable the judges of the circuit court of the United States, for the ninth circuit, and eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between J. W. Zacharie & Co., plaintiffs, and F. C. Black, defendant, and James Chapman, intervenor, a manifest error hath happened to the great damage of the said F. C. Black and James Chapman, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January, eighteen hundred and forty-three, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States, should be done.

1027.

Witness the honorable Roger B. Taney, chief justice of the [SEAL.] said Supreme Court, this 24th day of March, in the year of our Lord one thousand eight hundred and forty-two.

DUNCAN N. HENNEN, *Clk.*

Copy of the writ *in* error lodged in the clerk's office, in pursuance of the statute in such case made and provided.

(Signed) LOCKETT & MICON,
Att'ys for Defendant and Intervenor.

I certify that this copy of a writ of error was lodged in the clerk's office by the counsel of defendant and intervenor, on the twenty-fourth of March, 1842.

DUNCAN N. HENNEN, *Clk.*

The United States of America, to J. W. Zacharie & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the United States circuit court, 9th circuit, eastern district of Louisiana, wherein Francis C. Black and James Chapman are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 28th day of March, in the year of our Lord one thousand eight hundred and forty-two.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Citation in error to J. W. Zacharie & Co.

Received 28th March, 1842, and same day served a copy of the within citation in error on Theodore Zacharie, in person, in New Orleans, one of the commercial firm of J. W. Zacharie & Co.

A. S. ROBERTSON, *U. S. M.*
By WM. K. STILES, *D'y U. S. M.*

Filed 21st January, 1843.